TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1926

No. [redacted] 296

THE MASSACHUSETTS STATE GRANGE, THE INHABITANTS OF THE TOWN OF HADLEY, MASSACHUSETTS; THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL., APPELLANTS,

vs.

JAY R. BENTON, AS ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS; FREDERICK W. COOK, AS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS; PAYSON SMITH, AS COMMISSIONER OF EDUCATION, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

FILED FEBRUARY 10, 1926

(31,690)

(31,690)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 967

THE MASSACHUSETTS STATE GRANGE, THE INHABITANTS OF THE TOWN OF HADLEY, MASSACHUSETTS; THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL., APPELLANTS,

vs.

JAY R. BENTON, AS ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS; FREDERICK W. COOK, AS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS; PAYSON SMITH, AS COMMISSIONER OF EDUCATION, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

INDEX

	Original	Print
Record from the district court of the United States, district of Massachusetts		
Caption	1	1
Amended bill of complaint	1	
Exhibit "A"—"An act to save daylight and to provide standard time for the United States," Act of March 19, 1918	2	1
Exhibit "B"—"An act for the repeal of the Daylight Saving Law," Act of August 20, 1919	47	29
	48	30

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 5, 1926

INDEX

	Original	Print
Summons and marshal's return (omitted in printing)	51	
Special appearance and motion to dismiss	53	31
Statement re motion to amend bill of complaint	54	33
Motion for a three-judge court	55	33
Minute entries	55	34
Final decree	56	34
Minute entry of order allowing appeal	56	35
Opinion per curiam	56	35
Petition for appeal and order allowing same	59	38
Assignments of error	59	39
Bond on appeal (omitted in printing)	66	
Praecipe for transcript of record	68	46
Citation and service (omitted in printing)	69	
Clerk's certificate (omitted in printing)	71	
Stipulation re certain exhibits	72	47
Statement of points to be relied upon and designation by appellants of parts of the record to be printed, with proof of service	73	47

[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

MASSACHUSETTS STATE GRANGE, INHABITANTS OF THE TOWN of Hadley, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Charles F. Clark, Frances C. Snow, and Charles W. Mann, Plaintiff,

vs.

JAY R. BENTON, as Attorney General of the Commonwealth of Massachusetts; Frederic W. Cook, as Secretary of the Commonwealth of Massachusetts; Payson Smith, as Commissioner of Education of the Commonwealth of Massachusetts, and William S. Youngsman, as Treasurer and Receiver General of the Commonwealth of Massachusetts, Defendants.

AMENDED BILL OF COMPLAINT—Filed September 3, 1925

[fol. 3] To the Honorable Judges of the above-entitled court:

The above named plaintiffs present and file their Bill of Complaint, mutually seeking a common equitable relief, each also bringing this bill in behalf of all others in like situation, and allege as their common cause of suit the following facts, to wit:

I

(a) The plaintiff, The Massachusetts State Grange, was, at all times herein mentioned, and now is, "peculiarly a farmers' institution," duly organized and existing by virtue of an act of incorporation of the Commonwealth of Kentucky entitled "An Act to Incorporate the National Grange of the Patrons of Husbandry," approved March 14, 1876, and having a usual place of business in the office of Ernest H. Gilbert, Master of said State Grange, at Stoughton, County of Norfolk, Commonwealth of Massachusetts.

[fol. 4] (b) The plaintiff, the Inhabitants of the Town of Hadley, is a municipal corporation, organized and existing by virtue of a charter of the Commonwealth of Massachusetts issued in 1659, A. D., and having its usual place of business in Hadley, County of Hampshire, Commonwealth of Massachusetts.

(c) The plaintiff, the Brotherhood of Locomotive Engineers, is a chartered organization of workmen engaged in interstate and intrastate transportation of passengers and freight upon the railroads of the United States, incorporated by an act of the Legislature of the State of Ohio and at all times herein mentioned having a usual place of business in Framingham, County of Middlesex, Commonwealth of Massachusetts.

(d) The plaintiff, the Brotherhood of Locomotive Firemen and Enginemen, is a chartered organization of workmen engaged in interstate and intrastate transportation of passengers and freight upon the railroads of the United States, incorporated by an act of the Legislature of the State of Ohio, and at all times herein mentioned having a usual place of business in Worcester, Worcester County, Commonwealth of Massachusetts.

[fol. 5] (e) The plaintiff, Frances C. Snow, resides, and at all times herein mentioned has resided in the Town of Williamsburg; County of Hampshire, Commonwealth of Massachusetts.

(f) The plaintiff, Charles F. Clark, resides, and at all times herein mentioned has resided in the Town of Sunderland, County of Franklin, Commonwealth of Massachusetts.

(g) And the plaintiff, Charles W. Mann, resides, and at all times herein mentioned has resided in the Town of Methuen, County of Essex, Commonwealth of Massachusetts.

II

(a) The defendant, Jay R. Benton, is Attorney General of the Commonwealth of Massachusetts, having duties more particularly hereinafter set forth, and having his usual place of business in Boston, County of Suffolk, in said Commonwealth.

(b) The defendant, Frederic W. Cook, is Secretary of the Commonwealth of Massachusetts, having duties more particularly hereinafter set forth, and having his usual place of business in Boston, County of Suffolk, in said Commonwealth.

[fol. 6] (c) The defendant, Payson Smith, is Commissioner of Education of the Commonwealth of Massachusetts, having duties more particularly hereinafter set forth, and having his usual place of business in Boston, County of Suffolk, in said Commonwealth.

(d) The defendant, William S. Youngsman, is Treasurer and Receiver General of the Commonwealth of Massachusetts, having duties more particularly hereinafter set forth, and having his usual place of business in Boston, County of Suffolk, in said Commonwealth.

III

In the year 1920 the Legislature of the Commonwealth of Massachusetts passed an act which is set forth in the Acts and Resolves of the Commonwealth of Massachusetts of the year 1920, in chapter 280, as follows:

"An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' So Called"

Whereas, It is desirable that the benefits of this act should be enjoyed during the present year, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted, etc., as follows:

"Section 1. If this act takes effect upon its passage, the standard time shall, in this Commonwealth, be advanced one hour at two o'clock ante-meridian on the last Sunday [fol. 7] in April in the current year, otherwise it shall so be advanced at the same hour on the Sunday next following the date when the act takes effect. In either case, at two o'clock ante-meridian on the last Sunday in October in the current year, such standard time shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein

the commonwealth is situated, the standard official time of which is described as United States eastern time, so that between two o'clock ante-meridian on the day when the clock is advanced as aforesaid, and the last Sunday in October at two o'clock ante-meridian in the current year, the standard time in this commonwealth shall be one hour in advance of said United States standard eastern time.

Section 2. At two o'clock ante-meridian of the last Sunday in March of each year, beginning with the year nineteen hundred and twenty-one, the standard time in this commonwealth shall be advanced one hour, and at two o'clock ante-meridian of the last Sunday in October of each year the standard time in this commonwealth shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the commonwealth is situated, the standard official time of which is described as United States standard eastern time, so that between the last Sunday of March at two o'clock ante meridian and the last Sunday in October at Two o'clock ante meridian in each year the standard time in this commonwealth shall be one hour in advance of the United States standard eastern time.

Section 3. In all laws, statutes, orders decrees, rules and regulations relating to the time of performance of any act by any officer or department of this commonwealth, or of any county, city, town or district thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of this commonwealth, and in [fol. 8] all the public schools and other institutions of the commonwealth, or of any county, city, town or district thereof, and in all contracts or choses in action made or to be performed in the commonwealth, it shall be understood and intended that the time shall be United States standard eastern time as changed by this act."

And said Act was amended by Acts and Resolves of 1921, in chapter 145, as follows:

"An Act to Shorten the Period of Daylight Saving, So Called"

Whereas, The deferred operation of this act would in part defeat its purpose, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Section ten of chapter four of the General Laws is hereby amended by striking out, in the second and ninth lines, the word "March," and inserting in place thereof the word:—April,—and also by striking out, in the fourth and ninth lines, the word "October," and inserting in place thereof the word:—September,— so as to read as follows:—Section 10. At two o'clock ante-meridian of the last Sunday in April of each year, the standard time in this commonwealth shall be advanced one hour, and at two o'clock ante-meridian of the last Sunday in September of each year the standard time in this commonwealth shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the commonwealth is situated, the standard official time of which is described as United States standard eastern time, so that between the last Sunday of April at two o'clock ante [fol. 9] meridian and the last Sunday in September at two o'clock ante-meridian in each year the standard time in this commonwealth shall be one hour in advance of the United States standard eastern time. And in all laws, statutes, orders, decrees, rules and regulations relating to the time of performance of any act by any officer or department of the commonwealth, or of any county, city, town or district thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the commonwealth, and in all the public schools and in all institutions of the commonwealth, or of any county, city, town or district thereof, and in all contracts or choses in action made or to be performed in the commonwealth, it shall be understood and intended that the

time shall be United States standard eastern time as changed by this section.

Approved March 23, 1921."

IV

At the General Election held in the Commonwealth of Massachusetts on November 4, 1924, there was submitted to the voters of said Commonwealth referendum question No. 6, as follows:

"Shall daylight saving be retained by Law in Massachusetts?"

There were cast for said measure four hundred ninety-two thousand two hundred thirty-nine (492,239) votes and there were cast against said measure four hundred twenty-six thousand seven hundred fifty-nine (426,759) legal votes.

[fol. 10]

V

Said chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 as amended has never been repealed, and said act as amended and set out in § 10 of chapter 4 of the General Laws, would now be a law of the Commonwealth of Massachusetts except that it contravenes and violates the provisions of the Constitutions of that Commonwealth and of the United States and the prosions of the Act of Congress of March 19, 1918, hereunto annexed, marked "A" and made a part of this bill, as amended by the repeal of Section 3 by the Act of Congress of August 20, 1919, also hereunto annexed, marked "B", and made a part of this bill. Said Chapter 280 of the Acts of 1920 as amended is hereinafter referred to as the Pretended Daylight Saving Act.

VI

The plaintiffs are citizens of the United States and are all "subject to the jurisdiction of the United States" within the meaning of those words as used in the act of Congress of March 19, 1918, hereunto annexed, marked "A."

[fol. 11]

VII

The Town of Hadley is one of the three hundred sixteen (316) subdivisions of the Commonwealth of Massachusetts designated as towns, and is an integral part of the geographical area of the United States comprising "the first zone" throughout which United States Eastern Standard Time has been established by the Acts of Congress of March 19, 1918, and August 20, 1919, hereunto annexed, marked "A" and "B."

VIII

The Commonwealth of Massachusetts is one of the union of states constituting in their combination the United States of America and said Commonwealth is inhabited by citizens and residents "subject to the jurisdiction of the United States" within the meaning of those words as used in the Act of Congress of March 19, 1918, hereunto annexed and "A."

IX

The Commonwealth of Massachusetts is an integral part of the geographical area of the United States comprising "the first zone" throughout which United States Eastern Standard Time has been established by the Act of Congress of March 19, 1918, hereunto annexed, marked "A", and the Act of Congress of August 20, 1919, hereunto annexed, marked "B."

[fol. 12]

X

Time is a measure of duration and by the Acts of Congress of March 19, 1918, and of August 20, 1919, hereunto annexed, marked "A" and "B," Congress has established a standard measure of duration, to wit a standard time for every geographical area of the United States and Alaska.

XI

In the measure of duration by a standard i. e., United States standard eastern time as established by the Act of Congress of March 19, 1918, two elements in addition to the chronological divisions of the day are taken into ac-

count, to wit: (1) Degree of longitude and (2) The position of the sun at midday at that degree of longitude; and an arbitrary alteration in these elements by advancing the standard official time one hour, such as said Pretended Daylight Saving Act undertakes to make, constitutes a change in the standard measure of time and produces a violent conflict with United States Standard Eastern time as established by said Acts of Congress.

[fol. 13]

XII

The plaintiff, the Massachusetts State Grange, is an organization of three hundred three (303) subordinate granges located throughout the Commonwealth of Massachusetts, having a membership within said Commonwealth of fifty thousand nine (50,009) members, all patrons of husbandry and directly interested in or engaged in agricultural enterprises; said organization is dedicated by its charter, constitution, and by-laws to the elevation of the farmers as a class, to the correction of public abuses, to securing just remuneration of labor and to the advancement of agricultural husbandry in all its aspects by the use of co-operation and united effort; said organization is dependent for the support necessary to the continued maintenance of its lawful activities upon the fifty thousand nine (50,009) aforesaid members who are now being deprived of their constitutional rights and privileges by the aforesaid Pretended Daylight Saving Act.

[fol. 14]

XIII

There are in the Commonwealth of Massachusetts approximately thirty-two thousand (32,000) farms, having a total area of 2,494,471 acres of land; and about fifty-three thousand persons are actually thereon engaged in agriculture; adding their families makes a total of about two hundred thousand (200,000) persons who reside on farms and are dependent upon agriculture for their livelihood; the value of the farm property of said Commonwealth exceeds three hundred million dollars ($300,000,000.00) and the annual value of the farm products produced in said Commonwealth is approximately one hundred million dollars ($100,000,000.00); and agriculture stands second in im-

portance among the industries of said Commonwealth; Said Pretended Daylight Saving Act has caused and is now causing an annual unnecessary loss to the citizens of said Commonwealth engaged in agricultural enterprises of eight million dollars ($8,000,000.00), and the effect of the operation of said Pretended Daylight Saving Act has been and now is to depreciate the farm lands, buildings and property used in agricultural enterprises in said Commonwealth by a sum exceeding twenty million dollars ($20,000,000.00) in value, based solely upon agricultural conditions, thus depriving those engaged in agriculture in said Commonwealth of their property without due process of law, and [fol. 15] tending to destroy and to a definite degree actually destroying the basic industry of agriculture in manner contrary to the provisions of the United States Constitution, and thereby threatening to destroy and to a definite degree actually destroying the industrial supremacy of said Commonwealth.

XIV

That agricultural pursuits require for their successful operation large supplies of day labor; and in the Commonwealth of Massachusetts this labor supply in the main resides within hearing of the school signals which are sounded in accordance with provisions of said Pretended Daylight Saving Act which compels the schools of said Commonwealth to open in compliance with its pretended standard of time one hour earlier than United States Standard Eastern Time; this compels the man with labor to sell to organize his home and social life in accordance with said Pretended Daylight Saving Act, and puts him in a position where he will not, and cannot without unreasonable hardship, offer his labor to the agriculturist except upon terms wherein the hours of his employment conform to the social, domestic, and school schedule arbitrarily and unreasonably imposed upon him by said Pretended Daylight Saving Act; [fol. 16] this brings the laborer to the farm by force of the operation of said Pretended Daylight Saving Act while the dew is on the grass and other crops and while the frost is on the apple trees, and compels the farmer to pay for work which he cannot use at all or employ to advantage, and compels the laborer to start his afternoon's work at high

noon, thus endangering his life from sunstroke, and his health from heat prostration; and the aforesaid laborers, shackled by said pretended Daylight Saving Act as aforesaid, quit their day's labor in accordance with its pretended standard of time, to wit, at 4 P. M. United States Standard Eastern Time, which is the hour when the farmer most needs his labor, and the very time when farm labor efficiency is at its peak, thus causing further extensive and irreparable, annual losses, to those engaged in agriculture in said Commonwealth, and greatly depreciating the value of their property and depriving them of their rights, privileges and immunities as citizens of the United States of America under the United States Constitution.

[fol. 17] XV

That the operation of said Pretended Daylight Saving Act has contributed to and is now contributing to, the financial misfortune of large numbers of the inhabitants of said Commonwealth engaged in agricultural pursuits therein, and has by depreciating the value of their property and by destroying the value thereof, forced many who have been and desire to continue to be agriculturalists therein to forsake their calling and to seek a livelihood in industrial enterprises in said Commonwealth or elsewhere.

XVI

That the plaintiff, Charles F. Clarke, is a native born citizen of the Commonwealth of Massachusetts, a voter, a tax payer and the owner of over two hundred (200) acres of land situated in said Commonwealth; said two hundred (200) acres of land is suitable for and largely devoted to the cultivation of onions and tobacco; that onions cannot be gathered until the ground is dried up in the morning and tobacco cannot be harvested until the sun is high enough to dispel all moisture and wilt the fresh cut plant so that its natural brittle condition is replaced by a wilted condition less fragile and which permits handling without damage; that said Pretended Daylight Saving Act in its operation and effect tends to cause and causes the owners of such land to cease being employers of labor and to become landlords who rent their land on shares to tenants who needs must

operate the same upon a basis destructive of the American standard of living; and said Pretended Daylight Saving Act tends to make it impossible to conduct agricultural enterprises at a profit, and depreciates in value to a large degree all land and property used for producing crops, and depreciates in value the cheaper grades of land used therefor to the extent and degree that they become wholly valueless for that purpose.

[fol. 18] XVII

The plaintiff, Charles W. Mann, is a native born citizen of the Commonwealth of Massachusetts, now and always a resident thereof, a voter, a taxpayer and a large land holder therein; and a land owner in the adjoining sister state of New Hampshire; he is engaged in agricultural enterprises and owns and operates a large farm and orchard; that the value of said farm and orchard land, prior to the operation of the Pretended Daylight Saving Act, was fifty thousand dollars ($50,000.00); that in connection with the orchard which he owns and operates, a large supply of labor is required; that it is impossible to pick apples or fruit or to cut hay until the dew has disappeared from the [fol. 19] grass and leaves of fruit trees, or until the sun has dispelled the autumnal frost gathered in the early hours of the morning on said fruit trees; that the help which he employs in the Commonwealth of Massachusetts is compelled to keep hours in accordance with the Pretended Daylight Saving Act by the school requirements of said act; that for the first hour of each day as determined by said Pretended Daylight Saving Act during the picking of the apples or the making of hay he is unable to employ the labor so engaged for such purpose, and that said labor so engaged terminates its day's work in accordance with the schedule of said Pretended Daylight Saving Act and the termination of said day made in accordance with said Pretended Daylight Saving Act is really made at 4 P. M. United States Standard Eastern Time, the hour when labor may be most efficiently employed in the making of hay and in the gathering of fruit from his said orchard or the harvesting of other crops; that he loses more than twelve per cent (12%) of the efficiency of his labor by reason of the operation of the Pretended Daylight Saving Act, and that

if he employs his labor beyond 4 P. M. said laborers insist upon time and a half, or double time, for such overtime work as is performed after 4 P. M. United States Standard [fol. 20] Eastern Time; that he is required to pay excess wages for the hour beyond 4 P. M. in order to make use of that period of the day when conditions are most propitious for the making of hay or the gathering of fruit from his said orchards or the harvesting of other crops; that the value of his aforesaid fruit and orchard land has been depreciated, considered solely as an agricultural enterprise, by reason of the operation of the aforesaid Pretended Daylight Saving Act to an extent of more than five thousand dollars ($5,000.00); that this plaintiff resides within about ten miles of the boundary line between said Commonwealth of Massachusetts and the sister State of New Hampshire and has frequent occasions to go in and out of said Commonwealth to said sister State of New Hampshire where he owns land and where United States Standard Eastern Time prevails, and that he frequently uses, in making said trips, railroads which are engaged in interstate commerce and which also conduct and are compelled by law to conduct their operations upon the United States Standard Eastern Time as set forth by Acts of Congress hereunto annexed, marked "A," and "B," and when so doing this plaintiff has to adjust his business operations which he is [fol. 21] compelled to conduct in the Commonwealth of Massachusetts according to the Pretended Daylight Saving Act, with the United States Standard Eastern Time by which said railroads conduct their operations, and by which the business operations of said sister state are conducted; that this causes the plaintiff loss of time, mental vexation, and loss of money, and that when he goes from this Commonwealth to said adjoining sister state, by whatever means he travels, he is obliged, by reason of said Pretended Daylight Saving Act, to adjust himself to the business conducted in said adjoining state according to United States Standard Eastern Time as set forth in said Acts of Congress, and such adjustment causes him embarrassment, mental vexation, loss of time and financial loss; and said Pretended Daylight Saving Act deprives this plaintiff of his constitutional rights and privileges.

XVIII

That the plaintiff, Frances C. Snow, is a native born citizen of the United States, a voter, and the mother of three children. The operation and effect of said Pretended Daylight Saving Act causes children to lose an hour's sleep every night; if the child is put to bed at 9 o'clock (8 o'clock [fol. 22] Standard Time) it is still light; there are noises outside or in the street; the house is still superheated; and the child does not, and will not, go to sleep until dark; in the morning it must arise in accordance with said Pretended Daylight Saving Act, in order to attend school; and this loss of sleep causes listlessness, is destructive of efficiency in school work, and undermines the public health of children, teachers, and parents; and said Pretended Daylight Saving Act works a distinct hardship on all mothers except those who hire maids to care for their children; invalids and the aged and infirm also suffer from its operation because in hot weather they are deprived of an hour's sleep in the cool of the morning by household activities which start one hour earlier by force of the operation of said Pretended Daylight Saving Act, which also requires the field laborer to start his afternoon's work at high noon when the sun is at its zenith and to work during the hottest part of the day, thus unnecessarily endangering his life from sunstroke and his health from prostration caused by the intense heat of noontide; and the mothers and heads of families in which one or more of the members are employed by the railroads, and there are many thousands of such families, are compelled to or- [fol. 23] ganize and conduct their household affairs upon two standards of time, with two clocks upon the same mantle, to which constant reference must be made throughout the day; and the imposition of such double standard, which compels Johnny, Jr., to go to and return from school on one standard of time, and John, Sr., to go to and return from work on another standard of time, places upon the mother at the head of that household a great, unreasonable and unnecessary burden, and uses up or destroys her hour of rest, exhausts her nervous energy and physical strength, and causes her mental strains, vexation and harassment, all of which undermines and tends to destroy

and does destroy the public health and disturbs and interferes with the general welfare.

XIX

That said Pretended Daylight Saving Act violently conflicts with United States Standard Eastern Time as established by the Acts of Congress of March 19, 1918, and August 20, 1919, hereunto annexed, marked "A" and "B," upsets the orderly procedure of the business and social [fol. 24] life of the community, retards the hour of retirement for children who will not sleep before dark, compels by the force of its operation the aged and young to arise an hour earlier than they would by United States Standard Eastern Time, thus undermining the public health, disturbing the routine of family and social life throughout said Commonwealth, and setting at naught the avowed purpose of Congress "of establishing the Standard Time of the United States," and thereby depriving all the inhabitants of said Commonwealth of their rights and privileges under the United States Constitution.

XX

That the plaintiff, the Brotherhood of Locomotive Engineers, is organized to promote the general public welfare and the mutual welfare of the individual members of said organization; said organization is nation-wide in its scope, has a total membership throughout the nation of about eighty-five thousand (85,000) members, a membership residing in the Commonwealth of Massachusetts exceeding two thousand (2,000) and a membership of about two thousand (2,000) residing outside of said Commonwealth who, in the course of their employment, daily come into or go out of said Commonwealth; the entire membership of this organization is engaged in the interstate or [fol. 25] intrastate transportation of passengers and freight upon the railroads of the United States of America, and said plaintiff is dependent for the support necessary to the continued maintenance of its lawful activities upon its aforesaid members who are now being deprived of their constitutional rights and privileges by the aforesaid Pretended Daylight Saving Act.

XXI

The plaintiff, the Brotherhood of Locomotive Engineers and Firemen, is organized to promote the general public welfare and the mutual welfare of the individual members of said organization; said organization is nation-wide in its scope, has a total membership throughout the nation of about one hundred twenty-five thousand (125,000) members, a membership residing in the Commonwealth of Massachusetts exceeding two thousand five hundred (2,500) and a membership of about four thousand five hundred (4,500) residing outside of said Commonwealth who in the course of their employment daily come into or go out of said Commonwealth; the entire membership of this organization is engaged in the interstate or intrastate transportation of passengers and freight upon the railroads of the United States of America, and said [fol. 26] plaintiff is dependent for the support necessary to the continued maintenance of its lawful activities upon its aforesaid members who are now being deprived of their constitutional rights and privileges by the aforesaid Pretended Daylight Saving Act.

XXII

Practically all the railroads located in the Commonwealth of Massachusetts cross the boundaries of said Commonwealth and extend into the territory of adjoining sister states or Commonwealths; and the railroads which cross said Town of Hadley are engaged in both intrastate and interstate commerce; and the trains on all of said railroads are manned by members of the two organizations mentioned in the two preceeding paragraphs; trains on said railroads are run ostensibly upon United States Standard Eastern Time, but as a matter of fact the managers of said railroads change the running schedule of a majority of their trains concurrently with and conformable to the requirements of said Pretended Daylight Saving Act; a minority of said trains are not so changed but remain on the schedule in operation when the Pretended Daylight Saving Act does not operate because the official time of most neighboring states, into which said railroads [fol. 27] run, is United States Standard Eastern Time, and

the managers of said railroads are forced to adjust the operation of their trains to two conflicting standards of time; this brings about a condition where some trainmen running out of Boston in said Commonwealth are required to make one leg of a round trip on trains that are pushed ahead an hour by said managers, to conform to said Pretended Daylight Saving Act, and the other leg of said round trip upon trains that return from a state where United States Standard Eastern Time is adhered to and consequently start and operate on that standard without being pushed ahead an hour; on the outward trip said engineers, with reference to their connections, are thinking in terms of the standard of time imposed by said Pretended Daylight Saving Act, and upon their return trip, with reference to their connections, they are thinking in terms of United States Standard Eastern Time; trainmen are under the sway of habit just as strongly as any other class of citizens; during seven months of the year they operate their trains upon United States Standard Eastern Time, and the meeting places of their trains become fixed in the engineers' minds, then comes the change and mix-up which accompanies the operation of said Pretended Daylight Saving Act, and the points of meeting of said trains are [fol. 28] thereby shifted to points fifteen (15) or twenty-five (25) miles distant from the old meeting places; this causes confusion in the minds of the men in charge of trains and creates mental strain, vexation and harassment from which the general public interest and welfare requires they be relieved; this situation endangers the lives and limbs of said railroads' passengers and the public, and subjects the freight being transported by said railroads to a constant and unnecessary risk of destruction; death and damage have already occurred as a result of the operation of said Pretended Daylight Saving Act, which constitutes a menace to the public health and happiness, interferes with the regulation of interstate commerce in violation of the Constitution of the United States, and which forces said trainmen and their families to live and work by two standards of time, thereby infringing upon the rights, privileges and immunities of said trainmen and their families as guaranteed by the Constitution of the United States to the citizens thereof.

[fol. 29]

XXIII

The political subdivision of the Commonwealth of Massachusetts known as the Town of Hadley, has an area of thirteen thousand (13,000) acres of land largely devoted to agriculture and has a population of about two thousand nine hundred (2,900) people mainly engaged in agricultural pursuits; that the voters of said Town of Hadley, at a meeting of the inhabitants of said town, held on the first Monday of February, 1925, duly warned in that behalf by an article in the warrant of said town meeting, voted to conduct, and are now conducting, the affairs of said town upon United States Standard Eastern Time in defiance of the mandates of said Pretended Daylight Saving Act, which deprives the inhabitants of said Town of Hadley of their constitutional rights and privileges.

XXIV

Said Town of Hadley is one of the several towns of the Commonwealth of Massachusetts entitled by law to an allotment from the funds of said Commonwealth, to be paid in each year on or before November 15th, as State Aid for public schools; and said allotment lawfully due said town on November 15, 1925, will exceed three thousand five hundred dollars ($3,500.00).

[fol. 30]

XXV

Said Pretended Daylight Saving Act is an alleged law which affects the general welfare of the people; and the plaintiffs aver that the general welfare of the people of the Commonwealth of Massachusetts and of the citizens of the United States is affected adversely by said Pretended Daylight Saving Act.

XXVI

This is a suit in equity of a civil nature and arises under the Constitution of the United States and Amendments to said Constitution and certain Acts of Congress and the matters in controversy herein exceed, excluding all interest and costs, the sum and value of three thousand dollars ($3,000.00).

XXVII

The plaintiffs have no plain, speedy or adequate remedy at law.

XXVII (a)

That the defendants herein are not, either jointly or severally, possessed of sufficient means to satisfy a judgment against them for the large and substantial damages which will accrue to the plaintiffs if this Honorable Court does not restrain and enjoin said defendants and each of them, as hereinafter prayed.

XXVII (b)

The plaintiffs aver that if the plaintiffs are left to their remedy at law and unless this Honorable Court takes jurisdiction in equity of this cause of action the plaintiffs must bring a multiplicity of suits to determine their several rights, and the constituent members of the corporate plaintiffs, said Massachusetts State Grange, the Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Fireman and Engineman, the Inhabitants of the Town of Hadley must bring individual and numerous suits to deter- [fol. 31] mine their individual rights as appears by and from the allegations contained in this Bill of Complaint.

XXVII (c)

And the plaintiffs aver that if the plaintiffs are left to pursue their remedy at law and unless this Honorable Court takes jurisdiction in Equity of this cause of action the plaintiffs and each of them and the constituent membership of the corporate plaintiffs will suffer continuous, recurring, and irreparable injury and damage from the operation of said Pretended Daylight Saving Act and the defendants' plans, threats and intention to enforce and the defendants' enforcement of the same; and the inadequacy of the plaintiffs' remedy at law appears in and by the allegations contained in this Bill of Complaint.

XXVII (d)

Each of the defendants does now publicly declare, threaten and publish that he will enforce and assist in enforcing said Pretended Daylight Saving Act so that the same shall be and become operative in all its terms and said defendants, their agents and servants, individually and in concert, now plan and intend to enforce said Pre- [fol. 32] tended Daylight Saving Act; and each of the defendants, on account of the important office he holds exerts a potent, coercive influence upon the public mind in the Commonwealth of Massachusetts and by reason thereof, the average citizen of said Commonwealth, induced by the defendants' actions and statements as herein stated, are led to believe that it is unlawful, wrongful, improper and unpatriotic not to conform to the requirements of said Pretended Daylight Saving Act, whenever the same is operative, and that by not complying with the terms of said Pretended Daylight Saving Act they would be thereby guilty of violating a valid law; and, unless the defendants, who publish and declare that said Pretended Daylight Saving Act is valid, and who individually and concertedly publish, declare, threaten, plan and intend to enforce the same, and each of them, are restrained therefrom, they, as public officers of said Commonwealth, charged with the duty of enforcing and upholding the laws thereof, will continue to so publish, declare and threaten, and increasingly continue to exert a potent and coercive influence upon the public mind and to coerce thereby the aforesaid public into the general use of an invalid and void standard of time, and will, individually, and in concert, enforce said Pretended Daylight Saving Act to the great irreparable and continuous injury and damage of the plaintiffs, whose property to a definite degree is being destroyed and rendered [fol. 33] valueless thereby and the plaintiffs are now being deprived of their property rights in their said property, and the plaintiffs' said property is being depreciated in value and a percentage thereof rendered wholly valueless, and the plaintiffs' constitutional rights and privileges are being invaded, undermined and destroyed by said Pretended Daylight Saving Act and by the defendants' individual and concerted threats, plans and purposes to enforce the same in all its terms as aforesaid.

XXVIII

Said Pretended Daylight Saving Act is an alleged act having special reference to the duties and obligations of the towns and the public schools of towns within said Commonwealth of Massachusetts.

[fol. 34]

XXIX

Said Pretended Daylight Saving Act is an alleged act which affects all the people residing in said Commonwealth and all those citizens of adjoining states, commonwealths, and sister states having business to transact or engagements to keep in and with the citizens or residents of said Commonwealth of Massachusetts, or who are in any way in touch with the life and activities of said Commonwealth.

XXX

The plaintiffs claim the protection of the Constitution of the United States and the Acts of Congress and aver that said Pretended Daylight Saving Act is unconstitutional and void because it is repugnant to, and violates those clauses of Section 1 of Article XIV of the Amendments to the Constitution, which provide that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of life, liberty or property, without due process of law, nor deny to any citizen within its jurisdiction the equal protection of the laws, and that said Pretended Daylight Saving Act is repugnant to, and violates, that clause of Section 10 [fol. 35] of Article I of the Constitution, which provides that no state shall pass a law impairing the obligation of contracts, and is repugnant to, and violates, those clauses of Section 8 of Article I of said Constitution which confer upon Congress jurisdiction to prevent interference with interstate commerce and authority to fix the standards of measure in that Congress has declared its intention to fix and has definitely fixed, under said section, a standard of measure of duration, to wit: a Standard Measure of Time for said United States in conflict with said Pretended Daylight Saving Act.

XXXI

(a) The defendant, the said Jay R. Benton, is Attorney General of the Commonwealth of Massachusetts, duly elected, qualified and acting as such, and is charged with the duty of enforcing the laws of said Commonwealth, and is required to take cognizance of all violations of the law affecting the general welfare of the people; and this defendant is by law the legal adviser and official attorney of the other three defendants; said defendant, the Attorney General of the Commonwealth of Massachusetts, now publicly declares and publishes that said Pretended Daylight Saving [fol. 36] Act is a valid, salubrious, wise and wholesome law; that the same is now operative in all its terms and provisions, and has so advised, or will so advise the other three defendants; and the plaintiffs aver upon information and belief, that said defendant, the Attorney General, intends to perform the duty imposed upon him by the laws of said Commonwealth, and to enforce by appropriate court procedure or otherwise, the provisions of said Pretended Daylight Saving Act as and when the same is violated by a school, town or other political subdivision of said Commonwealth, or in any manner otherwise.

(b) The defendant, Frederic W. Cook, is Secretary of the Commonwealth of Massachusetts, duly elected, qualified and acting as such, and said Secretary is required by law to keep records of the acts and resolves of the general court of said Commonwealth and to notify the towns throughout said Commonwealth of such acts and resolves as and when the same are passed by the general court of said Commonwealth; and said Secretary has notified all the several towns of said Commonwealth of the passage of the said Pretended Daylight Saving Act, so-called, and has sent copies of said act to the said towns throughout said Commonwealth, and [fol. 37] it is the duty of the Secretary to notify said towns throughout said Commonwealth, of the results of votes taken on referendum questions, stating the votes thereon, and said Secretary has, pursuant to such duty, already notified all the towns throughout the Commonwealth of Massachusetts of the results of the aforesaid referendum vote upon said Pretended Daylight Saving Act, and that said Pretended Daylight Saving Act, by virtue of said vote,

is to be retained as a law on the statute books of said Commonwealth; and it is by implication, the plaintiffs aver, the duty of said defendant, the Secretary, to notify said towns whenever an act having special reference to the duties and obligations of said towns is declared unconstitutional.

(c) The defendant, Payson Smith, as Commissioner of Education for the Commonwealth, is required by law to determine the amount of the allotments from the funds of said Commonwealth to be paid on or before November 15th in each year to the several towns of said Commonwealth as State Aid for public schools; and it is provided by law that no town shall receive such payment unless it has, to the satisfaction of said defendant, complied with all the laws relating to public schools; and the plaintiffs, upon information and belief, aver that said defendant, the Commissioner [fol. 38] of Education, advised by the defendant, the Attorney General as aforesaid, intends to rule and find that the plaintiff, the Town of Hadley, by its aforesaid vote to conduct its affairs upon United States Standard Eastern Time, has failed to comply with the said Pretended Daylight Saving Act in its alleged application to towns and the schools of towns, thereby depriving said plaintiff, said Town of Hadley, of a large sum of money to which it would otherwise be entitled, and thereby depriving said Town of Hadley of its rights, privileges and immunities under the Constitution of the United States, and of its property without due process of law.

(d) The defendant, William S. Youngsman, as Treasurer of said Commonwealth of Massachusetts, is required by law annually to pay, on or before November 15th, the amount of the allotments made by the Commissioner of Education as aforesaid, to the several towns entitled thereto; and the plaintiffs aver upon information and belief, that said defendant, advised by the defendant, the Attorney General, as aforesaid, intends to, and will decline to pay to said plaintiff, the Town of Hadley, the amount of said allotment to which said Town is justly entitled on the ground that [fol. 39] said Town of Hadley by its aforesaid vote has failed to comply with said Pretended Daylight Saving Act in its alleged application to towns and the schools of towns, thereby depriving said Town of Hadley of a large sum of

money to which it would otherwise be entitled, and thereby depriving said Town of Hadley of its rights, privileges and immunities under the Constitution of the United States, and of its property without due process of law.

XXXII

Said plaintiffs allege that said Pretended Daylight Saving Act is unconstitutional and void for that it violates and contravenes the provisions of the Constitutions of the United States and of the Commonwealth of Massachusetts and the Acts of Congress in this:

(1) That said Pretended Daylight Saving Act undertakes to change the existing Acts of Congress hereunto annexed marked "A" and "B", which provide a "standard time for the United States" and attempts to impose upon a part of the territorial area of the "first zone" as established under said Acts of Congress, an altered standard of time determined solely by arbitrary, definite and avowed changes in said Acts of Congress.

(2) That it is not within the power or jurisdiction of a state or commonwealth to change or alter an existing Act of Congress.

(3) That said Pretended Daylight Saving Act Standing alone is incapable of interpretation, and without the Acts of Congress hereunto annexed marked "A" and "B" said Pretended Daylight Saving Act cannot be construed.

[fol. 40] (4) That said Pretended Daylight Saving Act attempts to usurp the functions of the Interstate Commerce Commission to which by said Acts of Congress, hereunto annexed marked "A" and "B", Congress has delegated the power to define "the limits of each zone" of the five zones constituting "the territory of continental United States" in that said Pretended Daylight Saving Act undertakes to modify and diminish the size, and alter the conditions of the "first zone" as established under said Acts of Congress by said Interstate Commerce Commission, and in that said Pretended Daylight Saving Act disorganizes and disrupts the operation of commerce under United States Standard Eastern Time within said zone as defined

by the said Interstate Commerce Commission, which is charged with the duty of defining said zones "for the convenience of commerce" as it exists "between the several states and with foreign nations", and in that the definition and modification of said zones may be lawfully brought about only by an order of said Interstate Commerce Commission.

(5) That said Pretended Daylight Saving Act violates and contravenes the Act of Congress of March 19, 1918, hereunto annexed, marked "A" in that therein Congress declared the "purpose of establishing the standard time of the United States" and did by the Sections of said act now in force establish such standard time.

(6) That said Pretended Daylight Saving Act violates and contravenes the Act of Congress of August 20, 1919, hereunto annexed, marked "B", which provides the manner in which "the standard time of each zone shall be returned to and thereafter be" United States Standard Time.

(7) That said Pretended Daylight Saving Act attempts to deprive the plaintiffs of their property without due process of law in violation of that clause in Section 1 of Article XIV of the Amendments to the Constitution of the United States which provides that "no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(8) That said Pretended Daylight Saving Act is void for that it embraces subjects which are not expressed in its title and for that its title, to wit: "An Act to Restore to the Citizens of Massachusetts the Benefits of Daylight Sav- [fol. 41] ing", so-called, is deceptive, and misleading in that the substance of said Pretended Daylight Saving Act in no manner and in no degree saves or is intended to save daylight, the quantity of which each day of the year is determined by the operation of the natural laws of the universe prescribed and ordained by Omnipotence, and in no degree within the jurisdiction of the Commonwealth of Massachusetts and in all aspects entirely beyond its power to control in any manner.

(9) That said Pretended Daylight Saving Act is void in that it undertakes to fix a standard of the measure of duration, to wit: a standard measure of time for the Commonwealth of Massachusetts, and thereby violates Section 8 of Article 1 of the Constitution of the United States by which the power to fix the standard measure of duration has been delegated to Congress and in that Congress has exercised that function and established under the power delegated to it by said Section a standard measure of duration, to wit, a standard measure of time for the geographical region occupied by said Commonwealth which said Act of Congress, hereunto annexed, marked "A", is in conflict with said Pretended Daylight Saving Act, and in that the power granted to Congress by the several states in said Section 8 of Article 1, to wit, the power to fix a standard measure of time, is a power, the nature of which is such that it requires in its use that it shall be exercised exclusively by Congress; and in that said power to fix a standard time, conferred upon Congress by said Section 8 of Article 1 is completely taken away from the Legislatures of the several states by said exercise of said power by Congress as thoroughly and as conclusively as if said States had been expressly forbidden to act upon said subject matter.

(10) That said Pretended Daylight Saving Act is void in that it impairs the obligation of contracts between citizens of sisterstates and Commonwealths by accelerating the maturity of said contracts when the same are to be performed within the Commonwealth of Massachusetts, and this violates the provisions of § 10 of Article I of the Constitution of the United States which provides that no state shall pass any law impairing the obligation of contracts.

[fol. 42] (11) That said Pretended Daylight Saving Act violates and contravenes the provisions of the fourteenth Amendment to the Constitution of the United States which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States" nor "deny to any person within its jurisdiction the equal protection of the laws."

(12) That said Pretended Daylight Savings Act violates and contravenes the provisions of Section 8 of Article 1

of the Constitution which provides that "Congress shall have the power to regulate commerce among the several states" in that a standard measure of duration, to wit, a standard measure of time, is so interwoven with interstate commerce and so inherently a part thereof that the power to deal with that subject has been delegated exclusively to Congress by the words "Congress shall have the power to regulate commerce among the several States".

(13) That said Pretended Daylight Saving Act is void for that it attempts, not to save time as the heading of said Pretended Act deceptively indicates, but said Act attempts to control and indirectly does control the uses to which fractional parts of the existing day shall be put by the population of the Commonwealth of Massachusetts and by citizens of the United States coming into said Commonwealth from sister states, and attempts to compel them and indirectly does compel them to start work and arrange their schedule for the day upon a basis one hour earlier than they would otherwise be required to do by United States Standard Eastern Time; and said Pretended Daylight Saving Act thereby abridges the privileges and immunities of citizens of the United States by attempting to compel and by compelling indirectly, said citizens when in the Commonwealth of Massachusetts to allocate the hours of their day upon an unnatural basis different from that required by United States Standard Eastern Time.

(14) That said Pretended Daylight Saving Act violates and contravenes that part of Section 8 of Article 1 of the Constitution of the United States which declares that "Congress shall have power to provide for the general welfare" of citizens of the United States, in that said Pretended Daylight Saving Act is therein declared to be "an emergency law, necessary for the immediate preservation of the public health and convenience", and by such alleged enactment the Commonwealth of Massachusetts usurps the function of [fol. 43] Congress already exercised in the Acts of March 19, 1918, and August 20, 1919 annexed marked "A" and "B", by attempting to decide what standard of time is beneficial for the general welfare of citizens of the United States residing in the Commonwealth of Massachusetts in defiance of and in conflict with the aforesaid Act of Congress establishing United States Standard Eastern Time

for the region occupied by said Commonwealth of Massachusetts.

(15) That said Pretended Daylight Saving Act goes on and off each year, and in its operation is equivalent to the enactment of two laws every year, each of which throws into confusion the orderly operation of commerce, disturbs and compels a readjustment of the social and business life of the community and affects the rights and privileges of citizens of the United States who live in adjoining states and in said Commonwealth.

(16) That said Pretended Daylight Saving Act denies to the plaintiffs the equal protection of the laws.

(17) That said Pretended Daylight Saving Act violates and contravenes Article X of Part I of the Constitution of Massachusetts which provides that each individual has a right to be protected "in the enjoyment of his life, liberty, and property according to standing laws".

(18) That said Pretended Daylight Saving Act violates and contravenes Article XII of Part I of the Constitution of Massachusetts which provides that "no subject shall be * * * despoiled, or deprived of his property, immunities or privileges, put out of the protection of the law, * * * or deprived of his life, liberty or estate, but by the judgment of his peers, or the law of the land.

(19) That said Pretended Daylight Saving Act violates and contravenes Article IV of Part II of the Constitution of Massachusetts which restricts the legislative power of the general court to the passage of laws which are "wholesome and reasonable", * * * "so as the same be not repugnant or contrary to this constitution."

[fol. 44] Wherefore the plaintiffs pray:

(1) That this Honorable Court will call to its aid in hearing this application for an interlocutory injunction a Justice of the Supreme Court of the United States or a Circuit Judge of the Circuit Court of Appeals of the United States for the First Judicial District, in Accordance with the Code of Judicial Procedure for such cases made and provided.

(2) That said Pretended Daylight Saving Act be declared unconstitutional and void and that this Honorable Court grant unto the plaintiffs an interlocutory writ of injunction enjoining and restraining the defendant, Jay R. [fol. 45] Benton, — General of the Commonwealth of Mass. ...setts, and each and all persons claiming to act under ...is authority or direction or control from enforcing said Pretended Daylight Saving Act and from now threatening or giving out that they or either of them will enforce said Pretended Daylight Saving Act, and that upon the final hearing of this cause, said injunction be made perpetual.

(3) That this Honorable Court grant unto the plaintiffs an interlocutory writ of injunction directed against the defendant, Payson Smith, Commissioner of Education of the Commonwealth of Massachusetts, directing him to leave out of consideration alleged violations of said Pretended Daylight Saving Act in determining the rights of the plaintiff, the Town of Hadley, and the other several towns of said Commonwealth to be paid from the funds of said commonwealth allotments as State Aid for public schools and that upon the final hearing of this cause said injunction be made perpetual.

(4) That this Honorable Court grant unto the plaintiffs an interlocutory writ of injunction directed against the defendant, William S. Youngsman, Treasurer and Receiver General of the Commonwealth of Massachusetts, directing said defendant to pay to the plaintiff, the Town of Hadley, and to the other several towns of said Commonwealth, the allotments found due said towns, and directing him to [fol. 46] cease withholding said payments of said allotments by reason of alleged violations by said towns or the schools of said towns of the alleged requirements of said Pretended Daylight Saving Act, and that upon the final hearing of said cause said injunction be made perpetual.

(5) That this Honorable Court, upon the final hearing of this cause grant unto the plaintiffs a mandatory writ of injunction directed against the defendant, Frederic W. Cook, Secretary of the Commonwealth of Massachusetts, directing him to notify the three hundred sixteen (316) towns constituting political subdivisions of said Common-

wealth of Massachusetts that said Pretended Daylight Saving Act is null and void.

(6) That the plaintiffs may have such other and further relief as to this Honorable Court may seem equitable in the premises.

Frank W. Morrison, Attorney for the Plaintiffs.

[fol. 47] Exhibit "A" to Amended Bill of Complaint

"An Act to Save Daylight and to Provide Standard Time for the United States."

(Act of March 19, 1918, Ch. 24 (40 Stat. L., 106), P. 450)

"Sec. 1. (Saving Daylight—New Standard Time—Zones.)—That, for the purpose of establishing the standard time of the United States, the territory of continental United States shall be divided into five zones in the manner hereinafter provided. The standard time of the first zone shall be based on the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich; that of the second zone on the ninetieth degree; that of the third zone on the one hundred and fifth degree; that of the fourth zone on the one hundred and twentieth degree; and that of the fifth zone, which shall include only Alaska, on the one hundred and fiftieth degree. That the limits of each zone shall be defined by an order of the Interstate Commerce Commission, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in commerce between the several States and with foreign nations, and such order may be modified from time to time (40 Stat. L., 106).

Sec. 2. (Duty to Observe New Time.)—That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between a state and any of the territories of the United States, or between a State or the Territory of Alaska and any of the insular possessions of the United States or any foreign country. In all statutes, orders, rules, and regulations relating to

the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed (40 Stat. L., 106).

Sec. 3. (Period for Observing New Time.)—That at two o'clock antemeridian of the last Sunday in March of each year the standard time of each zone shall be advanced one hour, and at two o'clock antemeridian of the last Sunday in October in each year the standard time of each zone shall, by the retarding of one hour, be returned to the mean as- [fol. 48] tronomical time of the degree of longitude governing each zone, respectively (40 Stat. L., 106)."

"Sec. 4. (Time of Each Zone—How Designated.)—That the standard time of the first zone shall be known and designated as United States Standard Eastern Time; that of the second zone shall be known and designated as United States Standard Central Time; that of the third zone shall be known and designated as United States Standard Mountain Time; that of the fourth zone shall be known and designated as United States Standard Pacific Time; and that of the fifth zone shall be known and designated as United States Standard Alaska Time (40 Stat. L., 106).

"Sec. 5. (Repeals.)—That all Acts and parts of Acts in conflict herewith are hereby repealed (40 Stat. L., 106)."

EXHIBIT "B" TO AMENDED BILL OF COMPLAINT

The Act of August 20, 1919

"An Act for the Repeal of the Daylight-Saving Law"

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 3 of the Act entitled 'An Act to save daylight and to provide standard time for the United States,' approved March 19, 1918, is hereby repealed, ef-

fective on approval of this Act, when by the retarding one hour the standard time of each zone shall be returned to and thereafter be the mean astronomical time of the degree of longitude governing each zone as defined in Section 1 of said Act approved March 19, 1918. C. 51, 41 Stat. L., 40.

This Act was passed over the President's objections by a two-thirds vote of both Houses.

[fols. 49 & 50] *Duly sworn to by Charles W. Mann. Jurat omitted in printing.*

[fols. 51 & 52] Summons and marshal's return omitted in printing.

[fol. 53] IN UNITED STATES DISTRICT COURT

SPECIAL APPEARANCE AND MOTION TO DISMISS—Filed September 28, 1925

Now come the respondents in the above entitled cause, appearing specially for the purpose of this motion and not admitting but specifically denying the jurisdiction of this Honorable Court, and pray that the bill of complaint filed in the above entitled cause be dismissed, and for causes of dismissal set forth the following grounds, among others:

1. That the matters therein contained in manner and form as the same are stated and set forth are not sufficient in equity for the complainants to maintain their action.

2. That no cause of action is set forth for the redress of which jurisdiction is given to this Honorable Court.

3. That the Commonwealth of Massachusetts, though not named as a respondent, is, nevertheless, the only real party against which alone in fact relief is asked.

4. That the cause of action against the four respondents as officers of the Commonwealth of Massachusetts is in reality a suit against the Commonwealth of Massachusetts.

5. That it does not appear that there is any matter in controversy arising under the Constitution or laws of the United States.

6. That with respect to the respondent Jay R. Benton, as he is Attorney General of the Commonwealth of Massachusetts, the complainants have a complete and adequate remedy in any proceedings that may be brought by him or in his behalf. The said respondent further respectfully suggests that this Honorable Court is without jurisdiction to grant the relief sought against him.

7. That with respect to the respondent Frederic W. Cook, as Secretary of the Commonwealth of Massachusetts, the complainants have a complete and adequate remedy at law. The said respondent further respectfully suggests that this Honorable Court is without jurisdiction to grant the relief sought against him.

[fol. 54] 8. That with respect to the respondent Payson Smith, as Commissioner of Education of the Commonwealth of Massachusetts, the complainants have a complete and adequate remedy at law. The said respondent further respectfully suggests that this Honorable Court is without jurisdiction to grant the relief sought against him.

9. That with respect to the respondent William S. Youngman, as Treasurer and Receiver General of the Commonwealth of Massachusetts, the complainants have a complete and adequate remedy at law. The said respondent further respectfully suggests that this Honorable Court is without jurisdiction to grant the relief sought against him.

Wherefore the respondents pray that the said bill of complaint may be dismissed with costs

Jay R. Benton, as Attorney General of the Commonwealth of Massachusetts; Frederic W. Cook, as Secretary of the Commonwealth of Massachusetts; Payson Smith, as Commissioner of Education of the Commonwealth of Massachusetts; William S. Youngman, as Treasurer and Receiver General of the Commonwealth of Massachusetts, by their attorney, Lewis Goldberg, Assistant Attorney General.

IN UNITED STATES DISTRICT COURT

STATEMENT RE MOTION TO AMEND BILL OF COMPLAINT—Filed December 4, 1925

At the same term, to wit, December 4, 1925, the following motion to amend the bill of complaint was filed and allowed in open court:

(MEMORANDUM.—Copy of the motion to amend bill of complaint, by adding paragraphs XXVII—(a), (b), (c) and (d) thereto, is here omitted as the amendments already appear in this transcript of record in the bill of complaint as amended, printed on page 2.—James S. Allen, Clerk.)

The aforementioned motion to amend bill of complaint was endorsed as follows:

This motion may be filed and allowed without prejudice to special appearance of counsel for defendants and the amendments contained herein may be considered by the court as a part of the plaintiffs' bill of complaint under the motion to dismiss heretofore filed by the defendants. Lewis Goldberg, Assistant Attorney General.

[fol. 55] IN UNITED STATES DISTRICT COURT

MOTION FOR A THREE JUDGE COURT—Filed December 9, 1925

Now come the plaintiffs in the above entitled cause, present their bill of complaint and move that the court call to its aid in hearing and determining said cause and the plaintiffs' application for injunction three judges, as provided in section 266 of the Judicial Code and Amendments thereto.

Massachusetts State Grange et al., by Frank W. Morrison, Their Attorney.

Due and sufficient statutory notice of hearing before three judges on Friday, December 18, 1925, at two o'clock in the afternoon upon plaintiffs' application for an interlocutory injunction and defendants' motion to dismiss is hereby admitted by the officials and defendants to have

been made in accordance with section 266 of the Judicial Code. Further service waived.

Dated December 10, 1925.

Lewis Goldberg, Assistant Attorney General and Attorney for said Officials and Defendants.

In United States District Court

Minute Entries

Thereupon, to wit, December 18, 1925, said cause comes on to be heard before the Honorable, George W. Anderson, Circuit Judge, James M. Morton, Jr., District Judge, and James A. Lowell, District Judge, on the prayer for preliminary injunction and on motion to dismiss.

This cause is thence taken under advisement and on the 31st day of December, A. D. 1925, an opinion of the court is announced denying application for a preliminary injunction and dismissing bill.

Thereupon, to wit, January 19, 1926, the following final decree is entered:

[fol. 56] In United States District Court

Final Decree—January 19, 1926

Anderson, Morton, and Lowell, JJ.:

This cause came on to be heard at this sitting upon the plaintiffs' motion and application for an interlocutory injunction and defendants' motion to dismiss, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the application for an interlocutory injunction be denied and that the bill be dismissed with costs.

By the Court:

John E. Gilman, Jr., Deputy Clerk.

In United States District Court

Minute Entry of Order Allowing Appeal

From the foregoing final decree, the plaintiffs claim an appeal to the United States Supreme Court, and give good and sufficient security that they will prosecute their appeal to effect and answer all costs if they fail to make their appeal good, and said appeal is allowed accordingly.

In United States District Court

Opinion—December 31, 1925

Before Anderson, Circuit Judge, and Morton and Lowell, District Judges

G. W. A., J. M. M., Jr., J. A. L.

Per Curiam:

The plaintiffs brought this suit to enjoin the Attorney General and other officials of the Commonwealth from enforcing the Massachusetts Daylight Saving Act, on the ground that it is in conflict with the Federal Standard Time Act, and therefore unconstitutional. It comes before this court, constituted of three judges under the provisions of section 266 of the Judicial Code, on the plaintiffs' application for a preliminary injunction. The respondents have filed a motion to dismiss,—in the nature of a general demurrer, and for lack of jurisdiction.

As we are all of the opinion that the application for a preliminary injunction must be denied, and that the bill must be dismissed, and as in such case an appeal may be taken directly to the Supreme Court, no elaborate analysis of the bill and of the questions involved is called for.

[fol. 57] It is elementary that the jurisdiction now invoked is not to be exercised except "in a case reasonably free from doubt," and "when necessary to prevent great and irreparable injury." Cavanaugh v. Looney, 248 U. S. 453, 456; Ex parte Young, 209 U. S. 123, 166. Plaintiffs met neither of these two essential conditions.

The Federal Standard Time Act (Act of March 19, 1918, 40 Stat. p. 450, as amended by the Act of August 20, 1919, 41 Stat. p. 280) divides continental United States into five zones of about fifteen degrees each, the precise limits of each zone to be defined by the Interstate Commerce Commission, "having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged" in interstate commerce; and provides that within the respective zones the standard time shall be the mean astronomical time,—starting at 75 degrees of West Longitude.

Plaintiffs rely chiefly upon section 2, which reads:

"That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between a State or the Territory of Alaska and any of the insular possessions of the United States or any foreign country. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, *or relating to the time within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States*, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed."

In argument stress is put upon the language underscored.

The Massachusetts Act, G. L. Mass., chap. 4, sec. 10, as amended by Acts 1921, Chap. 145, provides that from the last Sunday of April until the last Sunday of September "the standard time shall in this Commonwealth be advanced one hour"; so that "the standard time in this Commonwealth shall be one hour in advance of said United States standard eastern time."

This Act reads as follows:

"At two o'clock ante-meridian of the last Sunday in April of each year, the standard time in this commonwealth shall be advanced one hour, and at two o'clock ante-meridian of the last Sunday in September of each year the standard time in this commonwealth shall, by the retarding

of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the commonwealth is situated, the standard official time of which is described as United States Standard eastern time, so that between the last Sunday of April at two o'clock [fol. 58] ante-meridian and the last Sunday in September at two o'clock ante-meridian in each year the standard time in this commonwealth shall be one hour in advance of the United States Standard eastern time. And in all laws, statutes, orders, decrees, rules and regulations relating to the time of performance of any act by any officer or department of the commonwealth, or of any county, city, town or district thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the commonwealth, and in all the public schools and in all institutions of the commonwealth, or of any county, city, town or district thereof, and in all contracts or choses in action made or to be performed in the commonwealth, it shall be understood and intended that the time shall be United States Standard eastern time as changed by this section."

The plaintiffs' fundamental contention is that section 2 of the Federal Act makes Standard time the general measure of time for all persons subject to the jurisdiction of the United States; that therefore the provision of the Massachusetts Daylight Saving Act for a different standard of time during several months of the year is unconstitutional.

They urge that in providing a standard time for the United States, Congress acted under Article I, section 8, paragraph 5, of the Constitution, which says that,—"The Congress shall have power to fix the standard of weights and measures": and also that such power is soundly grounded upon the commerce clause. Compare Standard Time Zone Investigation case, 51 I. C. C. 273.

An answer to this contention is that, assuming that Congress has constitutional power under the standard-of-measure clause, or the commerce clause, or under both clauses, to provide a standard time applicable to all persons subject to the jurisdiction of the United States, it has not yet seen

fit to go further than to make such standard time applicable only: (1) to the movement of common carriers engaged in interstate and foreign commerce; (2) to its own officials and departments; and (3) to all acts done by any persons under Federal statutes, orders, rules and regulations. So construed,—the Federal Standard Time Act is not exclusive of State action on the same subject-matter; there is no conflict between the two Acts; the power of the States in regard to measuring time is the same as over insolvency when there is no Federal bankruptcy law. See Sturges v. Crowninshield, 4 Wheat. 122, 193; Ogden v. Saunders, 12 Wheat. 213. Compare Commonwealth v. Nicholson, 236 Mass. 292, 293, and cases cited.

[fol. 59] This view as to the construction of the Federal Statute makes it unnecessary for this court to state and discuss the serious jurisdictional questions raised,—either as to the rights of the plaintiffs or as to any power vested in the defendants by the Massachusetts Act to enforce that Act.

Application for a preliminary injunction denied; bill dismissed with costs.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed January 19, 1926

The above named plaintiffs conceiving themselves aggrieved by the order and decree denying an interlocutory injunction and dismissing the bills of complaint made and entered on January 19th, A. D. 1926, in the above entitled cause to hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Frank W. Morrison, Solicitor for Plaintiffs.

Jan. 19, 1926.

Petition allowed: G. W. Anderson, Cir. J.

In United States District Court

Assignments of Error—Filed January 19, 1926

Now, to wit, this 19th day of January, A. D. 1926, come the Massachusetts State Grange, the Inhabitants of the Town of Hadley, the Brotherhood of Locomotive Engi- [fol. 60] neers, the Brotherhood of Locomotive Firemen and Enginemen, Charles F. Clark, Frances C. Snow, and Charles W. Mann, plaintiffs in the above entitled cause, by Frank W. Morrison, Esquire, their Solicitor, and in connection with their appeal say that in the record and proceedings and in the order and decree denying plaintiffs' application for an interlocutory injunction and granting defendants' motion praying for dismissal of the plaintiffs' bill of complaint aforesaid, made and entered therein on the 19th day of January, A. D., 1926, there is manifest error to their prejudice, and for said error they assign the following:

I

That the court erred in holding that by the Act of Congress of March 19, 1918, entitled: "An Act to Save daylight and to provide Standard Time for the United States," as amended, Congress "has not yet seen fit to go further than to make such standard time applicable only: (1) to the movement of common carriers engaged in interstate and foreign commerce; (2) to its own officials and departments; and (3) to all acts done by any persons under Federal statutes, orders, rules and regulations," in that by such limited construction of said statute, as amended, the court has applied the rule: Expressio unius exclusio alterus, to the manifest destruction and defeat of the Congressional "purpose of establishing the standard time of the United States."

II

That the court erred in failing to hold that Congress has set up and provided a Congressional exposition and interpretation of its "purpose of establishing the standard time of the United States" for general use in the Act of March 19, 1918, by the passage of the Act of March 4, 1921, entitled: "An Act to Transfer the Panhandle and Plains

section of Texas and Oklahoma to the United Central Time Zone" (41 St. L. 1446), and by the passage of the Act of March 3, 1923, entitled: "An Act to Amend an Act entitled: 'An Act to Save Daylight and to provide Standard Time for the United States,' as amended," in that these two acts [fol. 61] were passed to relieve the distress of the people caused by the operation of the time standard in the areas affected by transfer-ing large sections of three states from one United States standard time zone to another, and for no other purpose.

III

That the court erred in failing to hold that the General Court of the Commonwealth of Massachusetts in passing Chapter 280 of the Acts and Resolves of 1920, as Amended, and set forth at large in paragraph three of the bill of complaint, and entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' so called," has set up and provided a legislature exposition and interpretation of the Act of Congress of March 19, 1918, as an act of general application to all persons, in that said chapter 280 purports "to restore to the citizens of Massachusetts the benefits of 'daylight saving,' so called," which said "citizens" had previously enjoyed solely by virtue of the general application for all purposes and to all persons "subject to the jurisdiction of the United States" of United States Standard Time as provided by the Act of Congress of March 19, 1918 entitled: "An Act to save Daylight and to provide standard time for the United States," and in that said chapter 280 is a substantial reenactment of section three of the Congressional act.

IV

That the Court erred in failing to hold that the words in the Act of Congress of March 19, 1918, upon which the court relies in limiting the application of United States Standard Time to carriers, have been repealed, to wit, the words: "That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between the several states or betwen a State and any of the Territories of the United States or between a State or

the Territory of Alaska and any of the insular possessions of the United States or any foreign country," in that said provision so far as it provides that the standard time of the zone shall within the respective zones govern the movement of all common carriers was repealed by the Act of Congress of March 4, 1921, entitled: "An Act to Transfer the Panhandle and Plains section of Texas and Oklahoma to the United States Central Time Zone" (41 St. L. 1446), wherein it is provided that the standard time of two zones may be used by carriers while operating within one zone, [fol. 62] and wherein it is provided: "That all laws and part of laws in conflict herewith are hereby repealed."

V

That the court erred in refusing to hold that the Act of Congress of March 19, 1918, entitled: "An Act to Save Daylight and to provide Standard Time for the United States," as amended by the Act of Congress of August 20, 1919, (c. 51, 41 St. L. 280) entitled: "An Act for the Repeal of the Daylight Saving Law," as amended by the Act of Congress of March 4, 1921, (41 St. L. 1446) entitled: "An Act to Transfer the Panhandle and Plains sections of Texas and Oklahoma to the United States Central Time Zone, and as amended by the Act of March 3, 1923, (c. 216, 42 St. L. 1434) entitled: "An Act to Amend an Act entitled: An Act to Save Daylight and To Provide Standard Time for the United States," does provide a standard for the measurement of time for general purposes applicable to all persons subject to the jurisdiction of the United States.

VI

That the court erred in not holding that Congress by the Act of March 19, 1918, entitled: "An Act to save daylight and to provide standard time for the United States," as amended, has established standard time for "the territory of continental United States" and thereby occupied the entire field of legislation relative to standard time.

VII

The court erred in failing to hold that the Act of Congress of March 19, 1918, entitled: "An Act to save daylight and provide Standard Time for the United States" is assignable as the source of its vitality to Article I, Section 8, paragraph 5 of the Constitution which provides that: "Congress shall have power to fix the Standard of * * * measures," and in failing to hold that the Act of Congress of March 19, 1918, provides a standard for the measurement of time and that said Act was designed to standardize time for the United States.

VIII

That the court erred in failing to hold that said chapter 280 of the Acts and Resolves of the Commonwealth of Massachusetts passed in the year 1920, sets up a time standard in conflict with the time standard provided for the territorial area of Massachusetts by the Act of Congress of March 19, 1918, entitled: "An Act to save daylight and to provide standard time for the United States," as amended.

[fol. 63]

IX

That the court erred in holding that "there is no conflict between the two Acts," to wit: between the Act of Congress of March 19, 1918, entitled: "An Act to save daylight and to Provide Standard Time for the United States," as amended, and chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' so called."

X

The court erred in holding that "the power of the States in regard to measuring time is the same as over insolvency when there is no Federal bankruptcy law" and that "the Federal Standard Time Act is not exclusive of State action on the same subject matter."

XI

The court erred in holding that chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' so called" is not repugnant to and does not contravene the Act of Congress of March 19, 1918, entitled: "An Act to Save Daylight and to Provide Standard Time for the United States," as amended by the Act of Congress of August 20, 1919, (c. 51, 41 St. L. 280) entitled: An Act for the Repeal of the daylight saving law," as amended by the Act of Congress of March 4, 1921, entitled: "An Act to Transfer the Panhandle and Plain's section of Texas and Oklahoma to the United States Central Time Zone," (41 St. L. 1446), and as amended by the Act of Congress of March 3, 1923, entitled: "An Act to Amend an Act Entitled 'An Act to save daylight and to provide standard time for the United States,' as amended" (c. 216, 42 St. L. 1434).

XII

The court erred in holding that chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' so called," in its relation to the Act of Congress of March 19, 1918, as amended is not repugnant to or in conflict with the Constitution of the United States or the Constitution of the Commonwealth of Massachusetts.

XIII

The court erred in failing to hold that all rights of the States to establish a standard of time (to save daylight) ceased upon the passage of the Act of Congress of August [fol. 64] 20, 1919, entitled "An Act for the repeal of the daylight saving law," which provides that "the standard time of each zone shall be returned to and thereafter be the mean astronomical time of the degree of longitude governing each zone as defined in Section 1 of said Act approved March 19, 1918" with no reference to interstate or foreign commerce.

XIV

The court erred in holding that chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 and entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' so called," is constitutional and not violative of the constitutional rights, privileges and immunities of the plaintiffs and of the individual members of the corporative plaintiffs.

XV

The court erred in not holding that it had jurisdiction of the plaintiffs' bill of complaint.

XVI

The court erred in not holding that the plaintiffs are in a position to raise the legal questions relied upon by them and determined against them by the above entitled court on the 19th day of January, A. D., 1926.

XVII

The court erred in holding that plaintiffs' bill does not present a case reasonably free from doubt and that a refusal of the relief sought will not be followed by great and irreparable injury.

XVIII

The court in holding that Congress has provided a "standard time applicable only: (1) to the movement of common carriers engaged in interstate and foreign commerce," erred in not also holding that chapter 280 of the Act and Resolves of Massachusetts entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' so called," is a conflicting and hostile piece of legislation and in its natural and necessary operation obstructs and interferes with interstate and foreign commerce when put in operation concurrently with United States Standard Time applied solely to interstate and foreign commerce.

[fol. 65]

XIX

That the court erred in refusing to enjoin the enforcement of the statute passed by the General Court of the Common-

wealth of Massachusetts on April 9th, 1920, entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight Saving,' so called," which statute is set forth at large in the third paragraph of the bill of complaint, which statute is also set forth in chapter 280 of the Acts and Resolves of Massachusetts for the year 1920, and amended by chapter 145 of said Acts and Resolves for the year 1921, also set forth at large in the third paragraph of the bill of complaint, and which said statute is also set forth without said amendment, in Massachusetts General Laws in the compilation of the General Laws of Massachusetts officially published by the Commonwealth of Massachusetts in the year 1921, as section 10 of chapter four.

XX

The court erred in not passing an injunctive order against the defendant, Jay R. Benton, as Attorney General of the Commonwealth of Massachusetts.

XXI

The court erred in not passing an injunctive order against the defendant Payson R. Smith, as Commissioner of Education for the Commonwealth of Massachusetts.

XXII

The court erred in not passing an injunctive order against the defendant, William S. Youngsman, as Treasurer and Receiver General of the Commonwealth of Massachusetts.

XXIII

The court erred in dismissing the plaintiffs' bill of complaint by its order and decree entered in the above entitled cause on January 19, A. D., 1926.

[fols. 66 & 67] Wherefore the said Massachusetts State Grange, the Inhabitants of the Town of Hadley, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, Charles F. Clark, Frances C. Snow, and Charles W. Mann, pray that the said order and decree entered January 19, A. D., 1926, denying

an interlocutory injunction and dismissing their bill of complaint be reversed.

(Sgd.) Frank W. Morrison, Solicitor for the Plaintiffs.

Bond on appeal for $250.00, approved and filed January 19, 1926, omitted in printing.

[fol. 68] In United States District Court

Præcipe for Transcript of Record—Filed January 19, 1926

To James S. Allen, clerk of the above-entitled court:

In preparing the record on appeal in the above entitled cause you will incorporate therein the following papers:

1. Bill of complaint, filed September 3, 1925, with the paragraphs added by amendment incorporated therein.
2. Subpœna, issued September 4, 1925, returnable September 24, 1925.
3. Special appearance and motion to dismiss filed September 28, 1925.
4. Motion for hearing before three Judges, filed December 9, 1925.
5. Opinion passed by court December 31, 1925.
6. Order and decree of court entered January 19th, 1926.
7. Petition for appeal and allowance thereof.
8. Assignment of errors.
9. Citation on appeal and record of proof of service thereof.
10. Large map entered as Exhibit A, small map entered as Exhibit B.

Frank W. Morrison, Solicitor for Plaintiffs.

Boston, January 29, 1926.

I assent to the within præcipe and do not care to add anything to the record.

Lewis Goldberg, Assistant Attorney General.

[fols. 69 & 70] Citation in usual form, showing service on Lewis Goldberg, omitted in printing.

[fol. 71] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 72 & 72a] In United States District Court

[Title omitted]

Stipulation re Certain Exhibits

It is hereby stipulated by and between the above parties that the maps marked Exhibits A and B may be considered by the court as a part of the record of said case without being printed in said record.

Frank W. Morrison, Solicitor for Appellants. Lewis Goldberg, Solicitor for Appellees.

[fol. 73] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Appellants of Parts of the Record to be Printed, with Proof of Service—Filed February 19, 1926

To the clerk of the above-entitled court:

Now come the appellants, and, in pursuance of Rule 11, subdivision 9, of the United States Supreme Court, state that the points on which they intend to rely are, in identical words, the assignment of errors contained in the record, to wit:

[fols. 74-77] Assignments of error omitted; printed side page 59 ante.

[fols. 78 & 79] That it will be necessary for the consideration of these points to incorporate in the transcript in this appeal, the following:

The entire record as certified by the Clerk of the District Court of the United States for the District of Massachusetts.

Phil. D. Swing, Frank W. Morrison, Solicitors for Appellants.

Dated February 15, 1926.

Due and sufficient service admitted.

Lewis Goldberg, Solicitor for Appellees.

[fol. 80] [File endorsement omitted.]

Endorsed on cover: File No. 31,690. Massachusetts D. C. U. S. Term No. 967. The Massachusetts State Grange; The Inhabitants of the Town of Hadley, Massachusetts; The Brotherhood of Locomotive Engineers et al., appellants, vs. Jay R. Benton, as Attorney General of the Commonwealth of Massachusetts; Frederic W. Cook, as Secretary of the Commonwealth of Massachusetts; Payson Smith, as Commissioner of Education, etc., et al. Filed February 10, 1926. File No. 31,690.

Office Supreme Court, U. S.
FILED
OCT 4 1926
WM. R. STANSBURY
CLERK

Supreme Court of the United States.

October Term, 1926.

No. [redacted] 296

MASSACHUSETTS STATE GRANGE ET AL.,
APPELLANTS,

v.

JAY R. BENTON, ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, ET AL.,
APPELLEES.

Appeal from the District Court for the District of Massachusetts.

Brief for the Appellants.

ANDREW A. CHESLEY & SON, NEW YORK, PRINTERS.

SUBJECT INDEX.

	Page.
Statement of case	1
Issues	1, 11
Jurisdiction	12
Argument	26
1. United States Standard Time is a standard for the measurable aspects of duration and is national-wide in plan and scope and was enacted under the standards-of-measure clause of the Constitution	26
2. If the Standard Time Acts of Congress do not constitute a standard of measure, they are referable to the commerce clause as the source of their vitality	51
(*a*) The Massachusetts Act is a conflicting and hostile piece of legislation	52
3. Multiplicity of suits an irreparable injury	57
4. This is not a suit against the state	63
5. Duty of Attorney General to enforce Massachusetts Act	63
6. Both the Federal Standard Time Act and the Massachusetts Act are mandatory	71
7. The Act of March 19, 1918, provides a Standard Time for general purposes, and the lower Court misinterpreted the Act	72
(*a*) *Expressio unius exclusio alterius*	74
(*b*) Government and its activities excluded from the general words of an Act unless especially mentioned or obviously included—Judge Story's statement of the rule	76
(*c*) Legislative expositions or interpretation of the meaning of Acts by other Acts	79
(*d*) Congress has repealed the specific provisions of the original Act relative to common carriers, and common carriers are now included in the general provisions of the original Standard Time Act of Congress	82
8. Conclusion	84

CASES CITED.

	Page.
Ames v. Kansas, 111 U.S. 462; 28 L. Ed. 487; 4 Sup. Ct. Rep. 437	12
Attorney General v. Apportionment Commissioners, 224 Mass. 599	70
Attorney General v. Henry B. Williams et al., 174 Mass. 476	66
Attorney General v. Methuen, 236 Mass. 564	69
Battersby v. Kirk, [1904] 1 Ch. 829	79
Beckford v. Wade, 17 Ves. 87	75
Brawner v. Irwin, 169 Fed. Rep. 964	16
Brooks v. Marbury, 11 Wheat. 75; 6 L. Ed. 423	49
Caldwell v. Dawson, 4 Met. (Ky.) 123	44
Carson v. Dunham, 121 U.S. 421; 30 L. Ed. 992; 7 Sup. Ct. Rep. 1030	12
Cavanaugh v. Looney, Atty. Gen., 248 U.S. 453	20
Central of Georgia Ry. Co. v. McLendon, 157 Fed. Rep. 967	23
Central of Georgia Ry. Co. v. Railroad Commission, 161 Fed. Rep. 959	23
Cherokee Nation v. Georgia, 5 Pet.	22
Chicago &c. R. Co. v. Hardwick, 226 U.S. 426	55
City R. Co. v. Citizens Street R. Co., 166 U.S. 557; 41 L. Ed. 1114; 17 Sup. Ct. Rep. 653	12
Clarion County v. Western Hosp. for Insane, 3 Atl. 97; 111 Pa. 339	71
Cohen v. United States, 38 App. D.C. 123	71
Commonwealth v. Nickerson, 236 Mass. 281	41, 48
Commonwealth v. Webster, 59 Mass. (6 Cush.) 386	65
Consolidated Gas Co. v. New York, 157 Fed. Rep. 882	23
Cooke v. Avery, 147 U.S. 385; 37 L. Ed. 212; 13 Sup. Ct. Rep. 340	12
Courtauld v. Legh, L.R. 4 Exch. 126; 38 L.J. 49	79
Crandell v. Nevada, 6 Wall. 35; 18 L. Ed. 745	15
Crane v. Johnson, 233 Fed. 335	21
Cruickshank v. Bidwell, 176 U.S. 73	20, 62
Curtis v. March, 3 H. & N. 866	31

Page.

C. & N.W. R.R. Co. v. Fuller, 17 Wall. 506; 21 L. Ed. 710 56
Davies v. Evans, 9 Q.B.D. 238; 51 L.J. M.C. 132 72
Delaware &c. R. Co. v. Troxell, 200 Fed. 45; 118 C.C.A. 272 54
Ellard v. Goodell, 203 Ala. 476; 83 So. 568 33
Evans v. Myers, 25 Pa. St. 114 44
Fisher's Case, 15 Ct. Cl. 328 84
Gibbons v. Ogden, 9 Wheat. 1 53
Giles v. Harris, 189 U.S. 475, 476; 47 L. Ed. 909 16
Greene v. Mayor of Fitchburg, 219 Mass. 121 25
Gulf &c. R. Co. v. Hefley, 158 U.S. 104 55
Gunter v. Atlantic Coast &c. R. Co., 200 U.S. 284; 50 L. Ed. 484; 26 Sup. Ct. 252 22
Hamblin v. Western Land Co., 147 U.S. 531; 37 L. Ed. 267; 13 Sup. Ct. Rep. 353 12
Harris v. Rutledge, 19 Iowa, 390 43
Hess v. Reynolds, 113 U.S. 79; 5 Sup. Ct., 377; 28 L. Ed. 927 83
Higgins v. California Petroleum &c. Co., 109 Cal. 310; 41 Pac. 1087 43
Holt v. Indiana Mfg. Co., 176 U.S. 72; 44 L. Ed. 374 16
Hopkins v. Clemson Agricultural College, 221 U.S. 644; 35 L.R.A. (N.S.) 243; 55 L. Ed. 895; 31 Sup. Ct. 654 22
Houston v. Moore, 5 Wheat. 1; 5 L. Ed. 1 42
Illinois Cent. R. Co. v. Mississippi R.R. Commission, 138 Fed. Rep. 331; 70 C.C.A. 617 23
Kirkdale Burial Board v. Liverpool Corporation, 73 L.J. Ch. 529 79
Leisy v. Hardin, 135 U.S. 100; 10 Sup. Ct. Rep. 681; 34 L. Ed. 128 38
Lindsley v. Natural Carbonic Gas Co., 162 Fed. Rep. 958 22
Little York Gold-Washing & Water Co. v. Keyes, 96 U.S. 199; 24 L. Ed. 656 12

Page.

Loomis v. Lehigh Valley R. Co., 208 N.Y. 330; 101 N.E. 914 54
Louisville &c. R. Co. v. Bosworth, 209 Fed. Rep. 386 22
Louisville &c. R. Co. v. Railroad Commission, 157 Fed. Rep. 953 23
Lowe v. Dorling & Son, [1906] 2 K.B. 772; 75 L.J. K.B. 1019 76
Massachusetts v. Mellon, 262 U.S. 447 19, 21
Miantinomi, The, 3 Wall. Jr. (C.C.) 46; 17 Fed. Cas. No. 9,521 43
Michigan Cent. R. Co. v. Vreeland, 227 U.S. 59 55
Michigan R.R. Tax Cases, 138 Fed. Rep. 230 23
Missouri Pac. Ry. Co. v. Jones, 170 Fed. Rep. 126 22
Moneyweight Scale Co. v. McBride, 199 Mass. 503 20
Morgan v. London General Omnibus Co., [1904] 1 Ch. 829 79
Moyer v. Peabody, 212 U.S. 78; 53 L. Ed. 410 16
Northern P. R. Co. v. Washington, 222 U.S. 370; 5 L. Ed. 237; 32 Sup. Ct. 160 53
N. W. Halsey & Co. v. Merrick, 228 Fed. 806 21
Ohio v. W. Virginia, 262 U.S. 553 52
Oregon-Washington R. & Nav. Co. v. State of Washington, 270 U.S.; 46 Sup. Ct. Rep. 84
Parker v. State, 29 So. W. 480 32
Pennoyer v. McConnaughy, 140 U.S. 1; 35 L. Ed. 363 63
Pennsylvania v. W. Virginia, 262 U.S. 553 52
People v. Tweed, 13 Abb. Prov. (N.S.) 24 70
Pierce, Governor, v. Hill Military Academy, 268 U.S. 10 23
Prout v. Starr, 188 U.S. 537; 47 L. Ed. 584 22
Railroad Commission of Louisiana v. Texas &c. Ry. Co., 144 Fed. Rep. 73; 75 C.C.A. 226 23
Reg. v. Bishop of Oxford, 4 Q.B.D. 245; 4 L.J. Q.B. 609 72
Rochester German Insurance Co. v. Peaseles-Gaulbert Co., 120 Ky. 752; 87 So. W. 1115; 1 L.R.A. (N.S.) 364; 9 Ann. Cas. 324 32

Page.

Seaboard Air Line Ry. Co. v. Railroad Commission, 155 Fed. Rep. 809 23
Shuman v. Gilbert, 229 Mass. 225 25
Slaughter House Cases, 16 Wall. 36, 130; 21 L. Ed. 394 18
Society of Sisters v. Hill Military Academy, 268 U.S. 510 23
Southern Ry. Co. v. McNeill, 155 Fed. Rep. 774 23
Southern Railway Co. v. Railroad Commission, 236 U.S. 447; 59 L. Ed. 666; 35 Sup. Ct. 304 54
Sperry Hutchinson Co. v. Kuhn, Atty. Gen., 212 Fed. 555 21
Starin v. New York, 115 U.S. 257; 29 L. Ed. 390; 6 Sup. Ct. Rep. 28 12
State v. Harper, 48 Mont. 463; 51 L.R.A. (N.S.) 157; 138 Pac. 498 54
Sturges v. Crowinshield, 4 Wheat, 122; 4 L. Ed. 529 41
Tennessee v. Davis, 100 U.S. 257; 25 L. Ed. 648 12
Terrace v. Thompson, Atty. Gen., 263 U.S. 197 24
Texas Tram. & L. Co. v. Hightower, 6 L.R.A. (N.S.) 1046 32
Thompson v. District of Columbia, 21 App. Cas. (D.C.) 395 48, 49
Truax v. Corrigan, 257 U.S. 312 24
Truax v. Raish, 239 U.S. 33; Ann. Cas. 1917-B; 283 L.R.A. 1916; 60 L. Ed. 131; 36 Sup. Ct. 7 21
Twining v. New Jersey, 211 U.S. 97; 53 L. Ed. 97 16
United States v. Fisher, 2 Cranch, 358; 2 U.S. (L. Ed.) 304 77
United States v. Herron, 20 Wall. 255; 22 U.S. (L. Ed.) 275 77
Unifed States v. Hoar, 2 Mason, 311; 26 Fed. Cas. No. 15,373 77
United States v. Old Settlers, 148 U.S. 468; 37 L. Ed. 524; 13 Sup. Ct. Rep. 650 12
Weaver v. Fegely, 29 Pa. St. 30 44

Page.

Webster v. Commonwealth, 59 Mass. (5 Cush.) 386 71
Western R. of Alabama v. Railroad Commission, 171 Fed. Rep. 701 22
Whelan v. New York &c. R. Co., 35 Fed. Rep. 853 84
Williams v. Sandles, 93 Ohio St. 92; 112 N.E. 206 44
W. J. Hingston, The, 144 Fed. Rep. 562 23
Young, Ex parte, 209 U.S. 155; 14 Ann. Cas. 764; 13 L.R.A. (N.S.) 932; 52 L. Ed. 727; 28 Sup. Ct. 441 22

STATUTES CITED.

Mass. St. 1898, c. 452, sec. 1 66
All other statutes cited are set forth in full in the Appendix
Opinion of the Court below reported in 10 Fed. Rep. (2d) 515

Supreme Court of the United States.

OCTOBER TERM, 1925.

No. 967.

MASSACHUSETTS STATE GRANGE; INHABITANTS OF THE TOWN OF HADLEY; BROTHERHOOD OF LOCOMOTIVE ENGINEERS; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN; CHARLES F. CLARK; FRANCES C. SNOW; and CHARLES W. MANN, *Appellants*,

v.

JAY R. BENTON, as Attorney General of the Commonwealth of Massachusetts; FREDERIC W. COOK, as Secretary of the Commonwealth of Massachusetts; PAYSON SMITH, as Commissioner of Education of the Commonwealth of Massachusetts; and WILLIAM S. YOUNGMAN, as Treasurer and Receiver General of the Commonwealth of Massachusetts, *Appellees*.

APPEAL FROM THE DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the District Court of the United States for the District of Massachusetts.

The case was brought under the provisions of section 266 of the Judicial Code, as amended. The appellants sought an interlocutory injunction, and the appellees filed

a motion to dismiss in the nature of a general demurrer. These were heard together. The Court denied the appellants' application and dismissed the bill. The opinion of the lower Court is printed in the record at page 35, and it also appears in 10 Fed. Rep. (2d) 515. Final decree was entered January 19, 1926 (R. 34).

The general question is whether the act of the Legislature of the Commonwealth of Massachusetts of April 9, 1920, entitled: "An Act to Restore to the Citizens of Massachusetts the Benefits of 'Daylight-Saving', so called," *which provides,* as amended, *that* for five months in each year *the standard time in that Commonwealth "shall be United States standard eastern time as changed by this act," is a valid, subsisting piece of legislation* (Mass. St. 1920, c. 280; R. 3; Appendix, 50) (all italics are ours).

Congress on March 19, 1918, passed an Act entitled: "An Act to Save Daylight and to Provide Standard Time for the United States" (40 Stat. L. 106; R. 29; Appendix, 1). This Act provided a standard time "*for the territory of Continental United States,*" based upon the mean astronomical time of certain meridians of longitude, 15 degrees or 1 hour apart. The Act uses the Greenwich meridian of longitude as the zero or prime meridian, to which the base meridian of each of the five time zones is referred, and standard time established commences with the mean astronomical time of the meridian of the 75th degree of longitude west from Greenwich, which is imposed by the Act as the standard time for the entire first zone, to "*be known and designated as United States Eastern Standard Time.*" Section 3 of this Act provides that for seven months in each year "*the Standard time of each shall be advanced one hour,*" that is to say, it shall be advanced to the mean astronomical time of the meridian of longitude 15 degrees nearer the zero meridian of Greenwich.

On August 20, 1920, Congress passed an Act entitled: "An Act to Repeal the Daylight-Saving Law," in which it provides for the repeal of section 3 of the Act of March 19,

1918, and enacts that "*the standard time of each zone shall be returned to and thereafter be the mean astronomical time of the degree of longitude governing the zone as defined in Section 1 of said Act approved March 19, 1918*" (41 Stat. L. 4; R. 30; Appendix, 30). In other words, less than eight months after Congress repealed the daylight-saving clause of its Standard Time Act and reaffirmed its provisions for standard time for Continental United States, the Legislature of the Commonwealth of Massachusetts undertakes "To Restore to the Citizens of Massachusetts the Benefits of Daylight-Saving, 'so called,'" by establishing a standard time for that Commonwealth, although Congress had enacted a standard time then in force for the entire "territory of Continental United States." And in doing this the Legislature of Massachusetts undertakes to change a United States standard. For the Massachusetts Act of which appellants complain provides in section 1 that "*the standard time in this Commonwealth shall be one hour in advance of said United States Standard Eastern Time,*" and again, section 3 provides "*that the time shall be United States Standard Eastern Time as changed by this Act.*"

Apart from its reference to the standard time established by Congress, the Massachusetts Legislature has provided no means in its Act of determining what its standard is. The Massachusetts Act is, as a mere inspection of the Act will disclose, a barnacle clinging to the United States Standard Time Act.

The bill of complaint (R. 1-34) alleges that these Acts of Congress, as further amended, were enacted under powers granted by the several states to Congress by section 8 of article I of the Constitution "*to fix the standard of weights* and *measures,*" and "*to regulate commerce*"; that the Massachusetts Act is unconstitutional and void, in that it violates and contravenes the provisions of the Constitution of the United States and is repugnant to and in conflict with the aforesaid Acts of Congress; that time denotes the measurable aspects of duration and that a standard time

is a standard for the measurement of that aspect of duration known as time.

The bill was brought by the plaintiffs (now appellants), and in behalf of all others in like situation, to obtain mutual relief from the operation and effect of the Massachusetts Act concurrently with the aforesaid Acts of Congress, which the bill alleges destroys their property without due process of law, deprives the plaintiffs of their constitutional rights and privileges, and disturbs and interferes with the orderly and safe conduct of interstate commerce, in which nearly 200,000 members of the corporate plaintiffs are solely engaged. The corporate plaintiffs bring the bill in behalf of their membership, and there is an allegation in connection with each corporate plaintiff that "said organization is dependent for the support necessary to the continued maintenance of its lawful activities upon its aforesaid members who are being deprived of their constitutional rights and privileges by the aforesaid" Massachusetts Act.

The bill alleges that the plaintiffs are citizens of the United States and are all "*subject to the jurisdiction of the United States*" within the meaning of those words as used in the Act of Congress of March 19, 1918; that the Massachusetts State Grange is a Kentucky Corporation; that it has a membership within the Commonwealth of Massachusetts of over 50,000, all "directly interested in or engaged in agricultural enterprises"; that the effect of the operation of the Massachusetts Act "*has been and now is to depreciate the farm lands, buildings and property used in agricultural enterprises in said Commonwealth by a sum exceeding twenty million dollars ($20,000,000.00) in value*"; that the corporate plaintiffs the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Enginemen and Firemen are Ohio corporations; that these organizations are national-wide in scope and number a combined membership exceeding 200,000, solely engaged in the interstate and intrastate transportation of freight and passengers; that 6500 of the constituent membership of these cor-

porate plaintiffs come into and go out of the Commonwealth of Massachusetts each day engaged in interstate commerce; that the trains on all the railroads are exclusively manned by the membership of these two Brotherhoods; that the trains on all the railroads in said Commonwealth "*are run ostensibly upon United States Standard Eastern Time, but as a matter of fact the managers of said railroads change the running schedule of a majority of their trains concurrently with and conformable to the requirements of said*" *Massachusetts Act* (R. 15); that "*the managers are forced to adjust the operation of their trains to two conflicting standards of time*" (R. 16); that this causes a change in the meeting point of trains two times each year; that this semi-annual change in meeting points of trains "*causes confusion in the minds of the men in charge of trains and creates mental strain, vexation* and harassment from *which the general public interest*" in interstate commerce "*and welfare require they be relieved*"; that "*this situation endangers the lives and limbs of said railroads' passengers and the public, and subjects the freight being transported by said railroads to a constant and unnecessary risk of destruction*"; that "*death and damage have already occurred as a result of the operation of said*" *Massachusetts Act*, which "*interferes with the regulation of interstate commerce in violation of the Constitution of the United States and forces said trainmen and their families to live and work by two standards of time.*"

The bill alleges that the Town of Hadley, a subdivision of the Commonwealth of Massachusetts, has an area of 13,000 acres of land, largely devoted to agriculture, and a population of about 2900 people, mainly engaged in agriculture; that at a duly named town meeting, held on the first Monday of February, 1925, the Inhabitants of the Town of Hadley "*voted to conduct and are now conducting, the affairs of said town upon United States Standard Eastern Time in defiance of the mandates of said*" *Massachusetts Act* (R. 17); that the inhabitants of said town are

lawfully entitled to an allotment as state aid to public schools from funds held for that purpose, and said allotment lawfully due said inhabitants of the Town of Hadley on November 15, 1925, exceeded $3500; that the defendants Payson Smith and William S. Youngman, whose official positions are Commissioner of Education and Treasurer of said Commonwealth of Massachusetts, respectively, advised by the defendant Jay R. Benton, Attorney General of said Commonwealth, are about to refuse to pay to said Inhabitants of said Town of Hadley its aforesaid allotment of $3500, on the ground that "*it is provided by law that no town shall receive such payment unless it has, to the satisfaction of said defendant*" Payson Smith, "*complied with all the laws relating to public schools,*" and *that said defendant, advised as aforesaid, "intends to rule and find that the Town of Hadley by its aforesaid vote to conduct its affairs upon United States Standard Eastern Time has failed to comply with the*" Massachusetts Act "*in its alleged application to towns and the schools of towns, thereby depriving said plaintiff, said Town of Hadley, of a large sum of money to which it would otherwise be entitled and thereby depriving said*" Inhabitants of *said Town of Hadley of their rights, privileges, and immunities under the Constitution of the United States and of property without due process of law.*

The bill alleges that the plaintiff Charles F. Clark is the owner of over 200 acres of land "suitable to and largely devoted to the cultivation of onions and tobacco"; that in its operation and effect the Massachusetts Act causes the owners of such land to cease becoming employers of labor and to rent said land on shares to tenants, "who needs must operate the same upon a basis destructive of the American standard of living"; and the effect of said Act is to depreciate "to a large degree all land and property used for producing crops" and "*the cheaper grades of land used therefor to the extent and degree that they become wholly valueless for that purpose.*"

The bill alleges that the plaintiff Frances C. Snow is the mother of three children; that the operation and effect of said Massachusetts Act *is destructive of efficiency in school work and undermines the public health of children, teachers and parents"*; and in households where one or more members of the family are employed by the railroads the mothers are compelled *"to organize and conduct their household affairs upon two standards of time," and that "the imposition of such double standard places upon the mother a great, unreasonable and unnecessary burden, and uses up or destroys her hour of rest, exhausts her nervous energy and physical strength, and causes her mental strains, vexation and harassment."*

The bill alleges that the plaintiff Charles W. Mann is the owner of land in both Massachusetts and the sister state of New Hampshire, where United States standard eastern time prevails; *that his land has been depreciated $5000 by reason of the operation and effect of said Massachusetts Act; that in connection with his interstate farming operations he has frequent occasion to go between Massachusetts and New Hampshire; that the conflicting time standards of these two states cause him, as an interstate farmer, "embarrassment, mental vexation, loss of time and financial loss," and the Massachusetts Act "deprives this plaintiff of his constitutional rights and privileges" as an interstate farmer engaged in interstate agricultural enterprises.*

The bill alleges that the defendant Jay R. Benton is Attorney General of the Commonwealth of Massachusetts, and as such *"is charged with the duty of enforcing the laws of said Commonwealth, and is required to take cognizance of all violations of the law affecting the general welfare of the people"* (R. 21); *that the Massachusetts Act affects all the people residing in said Commonwealth and all those citizens of adjoining sister states and Commonwealths having business to transact or engagements to keep in and with the citizens or residents of said Commonwealth of Massachusetts, or who are in any way in touch with the life and*

activities of said Commonwealth"; that "this defendant is by law the legal adviser and official attorney for the other defendants and now publicly declares and publishes that said" Massachusetts Act *"is a valid, salubrious, wise and wholesome law; and that the same is now operative in all its terms and has so advised" the other defendants* (R. 21); that "each of the defendants does now publicly declare, threaten and publish that he will enforce and assist in enforcing said Pretended Daylight Saving Act so that the same shall be and become operative in all its terms and said defendants, their agents and servants, individually and in concert, now plan and intend to enforce said Pretended Daylight Saving Act; and each of the defendants, on account of the important office he holds, exerts a potent, coercive influence upon the public mind in the Commonwealth of Massachusetts and by reason thereof, the average citizen of said Commonwealth, induced by the defendants' actions and statements as herein stated, are led to believe that it is unlawful, wrongful, improper and unpatriotic not to conform to the requirements of said Pretended Daylight Saving Act, whenever the same is operative, and that by not complying with the terms of said Pretended Daylight Saving Act they would be thereby guilty of violating a valid law; and, unless the defendants, who publish and declare that said Pretended Daylight Saving Act is valid, and who individually and concertedly publish, declare, threaten, plan and intend to enforce the same, and each of them, are restrained therefrom, they, as public officers of said Commonwealth, charged with the duty of enforcing and upholding the laws thereof, will continue to so publish, declare and threaten, and increasingly continue to exert a potent and coercive influence upon the public mind and to coerce thereby the aforesaid public into the general use of an invalid and void standard of time, and will, individually, and in concert, enforce said Pretended Daylight Saving Act to the great irreparable and continuous injury and damage of the plaintiffs, whose property to a definite

degree is being destroyed and rendered valueless thereby and the plaintiffs are now being deprived of their property rights in their said property, and the plaintiffs' said property is being depreciated in value and a percentage thereof rendered wholly valueless, and the plaintiffs' constitutional rights and privileges are being invaded, undermined and destroyed by said Pretended Daylight Saving Act and by the defendants' individual and concerted threats, plans and purposes to enforce the same in all its terms as aforesaid."

That the defendant Frederick W. Cook is Secretary of the Commonwealth, and as such is required by law to keep the records of the Commonwealth of Massachusetts, which includes the recording of the time of births, marriages, and deaths, and of the passage of the Acts and Resolves of the General Court of said Commonwealth; and this defendant, pursuant to his said duties, has sent copies of the Massachusetts Act to all the towns in said Commonwealth and notified them of its passage, and it is by implication the duty of this defendant "to notify said towns whenever an act having special reference to the duties and obligation of towns is declared unconstitutional."

The bill contains the averments "That the defendants herein are not, either jointly or severally, possessed of sufficient means to satisfy a judgment against them for the large and substantial damages which will accrue to the plaintiffs if this Honorable Court does not restrain and enjoin said defendants and each of them, as hereinafter prayed"; and that "if the plaintiffs are left to their remedy at law and unless this Honorable Court takes jurisdiction in Equity of this cause of action the plaintiffs must bring a multiplicity of suits to determine their several rights, and the constituent members of the corporate plaintiffs, said Massachusetts State Grange, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Inhabitants of the Town of Hadley, must bring individual and numerous suits to determine their individual rights as appears by and from the allega-

tions contained in this Bill of Complaint"; and that "if the plaintiffs are left to pursue their remedy at law and unless this Honorable Court takes jurisdiction in Equity of this cause of action the plaintiffs and each of them and the constituent membership of the corporate plaintiffs will suffer continuous, recurring, and irreparable injury and damage from the operation of said Pretended Daylight Saving Act and the defendants' plans, threats and intention to enforce and the defendants' enforcement of the same; and the inadequacy of the plaintiffs' remedy at law appears in and by the allegations contained in this Bill of Complaint"; and that "the plaintiffs have no plain, speedy or adequate remedy at law"; and that said Massachusetts Act "is an alleged act having special reference to the duties and obligations of the towns and the public schools of towns within said Commonwealth of Massachusetts."

The bill prays that the Massachusetts Act be declared unconstitutional and void and that Jay R. Benton, Attorney General of the Commonwealth, be enjoined from enforcing or threatening to enforce that Act; that the defendant Payson Smith, Commissioner of Education, who is by law joint Commissioner with the defendant William S. Youngman, Treasurer of said Commonwealth, of the state funds available as state aid to the public schools of the towns of said Commonwealth, be directed to leave out of his consideration the violation of the Massachusetts Act by the Town of Hadley in determining its right to be paid state aid for public schools; that the defendant William S. Youngman, Treasurer of said Commonwealth, be directed to cease withholding the payment of the school allotment to the Town of Hadley by reason of alleged violations by said Town of the Massachusetts Act, and that he be directed to pay said Town of Hadley the allotment found to be due it, without reference to the alleged violation by the Town or its schools of said Massachusetts Act; and that the defendant Frederic W. Cook, Secretary of said Commonwealth, be directed to

notify the 316 towns of said Commonwealth that the Massachusetts Act is null and void.

The bill of complaint concludes with the prayer:

> "That the petitioners may have such other and further relief as to this Honorable Court may seem equitable in the premises."

There are two maps which are made a part of the record and may be referred to.

The appellants will contend that the Massachusetts Act is not a valid and binding piece of legislation.

Because the Massachusetts Act violates, contravenes, and is repugnant to the Constitution of the United States:

(*a*) The sole authority to fix a standard time rests in Congress under the power granted to it in the Constitution in article I, sec. 8, by the several states "*to fix the standards of weights and measures,*" *in that the subject-matter is national in its scope and can be properly governed only by a uniform, integral, correlated system.*

(*b*) The exclusive power to fix a standard time rests in Congress under the power delegated by the several states to Congress in article I, sec. 8, of the Constitution "*to regulate commerce with foreign nations and among the several states,*" *in that the subject-matter operated upon by the granted power is national in its scope and can be properly governed only by a uniform, integral, correlated system.*

(*c*) The several states have no right to enact a standard time even in the absence of an Act of Congress establishing such standard.

2. And because *the Massachusetts Act is inconsistent with the Act of Congress of March 19, 1918, as amended, and is repugnant to and contravenes said Act of Congress:*

(*a*) The entire field of standard-time legislation

has been occupied by Congress, and, regardless of whether the granted power or powers exercised by Congress were originally exclusive of state action, the exercise of the granted power or powers excludes further action by the states on the subject-matter.

THE QUESTION OF JURISDICTION.

This case presents a Federal question, which confers jurisdiction; that is, it becomes necessary to construe the Constitution of the United States and Acts of Congress passed pursuant thereto, in order to reach a correct decision of the material issues and to determine the claims, rights, privileges, and immunities asserted by the appellants under the Federal Constitution and laws.

Starin v. *New York*, 115 U.S. 257; 29 L. Ed. 390; 6 Sup. Ct. Rep. 28.

Ames v. *Kansas*, 111 U.S. 462; 28 L. Ed. 487; 4 Sup. Ct. Rep. 437.

Cooke v. *Avery*, 147 U.S. 385; 37 L. Ed. 212; 13 Sup. Ct. Rep. 340.

Tennessee v. *Davis*, 100 U.S. 257; 25 L. Ed. 648.

United States v. *Old Settlers*, 148 U.S. 468; 37 L. Ed. 524; 13 Sup. Ct. Rep. 650.

Hamblin v. *Western Land Co.*, 147 U.S. 531; 37 L. Ed. 267; 13 Sup. Ct. Rep. 353.

Little York Gold-Washing & Water Co. v. *Keyes*, 96 U.S. 199; 24 L. Ed. 656.

City R. Co. v. *Citizens Street R. Co.*, 166 U.S. 557; 41 L. Ed. 1114; 17 Sup. Ct. Rep. 653.

Carson v. *Dunham*, 121 U.S. 421, 426; 30 L. Ed. 992, 993; 7 Sup. Ct. Rep. 1030.

The Court has jurisdiction therefore, because "this is a suit in equity of a civil nature and arises under the Constitution of the United States and Amendments to said Constitution and the matters in controversy herein exceed,

excluding all interest and costs, the value of $3000.00" (R. 17).

The case has the requisites of a controversy between citizens of different states. The plaintiff the Massachusetts State Grange is incorporated under the laws of the State of Kentucky; the plaintiffs the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Enginemen and Firemen are both incorporated under the laws of the State of Ohio (R. 1, 2, 8, 9, 10, 14, 15, 16), and these plaintiffs bring the bill in behalf of their members and there is an allegation in each case that "the plaintiff is dependent for the continued maintenance of its lawful activities upon its aforesaid members who are now being deprived of their constitutional rights and privileges by the aforesaid Pretended Daylight Saving Act," and it is alleged that 6500 of these plaintiffs' aforesaid members reside outside of Massachusetts, and in the course of their interstate commerce employment "come into and go out of" this Commonwealth daily; and it is alleged that the necessary operation and effect of the said Daylight Saving Act is to cause them confusion, vexation, mental strain, and harassment from which the general public's interest and welfare require they be relieved, because it endangers the lives and limbs of the railroads' passengers and the public and subjects the freight and these plaintiffs to constant and unnecessary risk of destruction, and because death and property damage have already occurred as a result of the operation of said Massachusetts Act, which interferes with the regulation of interstate commerce and forces these plaintiffs and their families to live and work by two standards of time, thereby infringing upon the privileges and immunities of these plaintiffs and their families as guaranteed by the Constitution of the United States to the citizens thereof (R. 14, 15, 16).

This is a suit or proceeding relative to and arising under a regulation of interstate commerce. It is the interstate-commerce feature of the Act of March 19, 1918, which has obscured in the minds of many the other important features

of the Act. Besides the allegations of the plaintiffs the railroad Brotherhoods already referred to, whose members operate all the engines engaged in interstate commerce in Massachusetts, which also give this Court jurisdiction under this section, attention is directed to the allegations regarding the plaintiff Charles W. Mann. He owns land in Massachusetts and in New Hampshire. His orchard and fruit land "has been depreciated, considered solely as an agricultural enterprise, by reason of the operation of the aforesaid Pretended Daylight Saving Act to an extent of more than $5,000.00;" he has frequent occasion "to go in and out of said Commonwealth to said sister State of New Hampshire, where he owns land, and by whatever means he travels he has to adjust himself to the business conducted in said adjoining State according to United States Standard Eastern Time," and such adjustment and readjustment upon his return to this Commonwealth causes him "embarrassment, mental vexation, loss of time and financial loss; and said Pretended Daylight Saving Act deprives this plaintiff of his Constitutional rights and privileges." The Court, therefore, clearly has jurisdiction under this subdivision, because here is a plaintiff interstate-commerce farmer actually engaged in interstate farming, and who, while conducting that form of interstate commerce, finds his farming-interstate-commerce intercourse with a sister state subject to the invidious restraints of the hostile and conflicting Massachusetts Standard Time Act in force concurrently with United States Standard Eastern Time, which forces him to conduct his interstate-farming-commerce operations under two time standards, and this necessarily causes him financial loss and obstructs and burdens his interstate-commerce-farming operations and has caused his property to depreciate $5000 in value, as alleged in the bill and admitted here by the defendants' motion to dismiss. When his interstate-commerce-farming operations require this appellant to go or send supplies across the state boundary the interstate-commerce expedition arrives in the sister state of New Hampshire "before it

starts," and upon the return "an hour is lost" before he and his interstate shipment of the products of his land reach their destination. The operation of the Massachusetts Act upon this plaintiff is not the same as upon a citizen of Massachusetts not engaged in interstate-commerce farming (R. 11, 12).

Crandell v. *Nevada*, 6 Wall. 35; 18 L. Ed. 745.

This is a suit in equity brought by persons and by corporations in behalf of individual persons to redress the deprivation, under color of a state statute, of rights, privileges, and immunities secured by the Constitution of the United States and of rights secured by a law of the United States, to wit, the Act of Congress of March 19, 1918, providing for and establishing equal rights for all persons within "the jurisdiction of the United States" to live and work and pass from state to state under a uniform, correlated, and integral standard time system therein promulgated and established "for continental United States."

United States Constitution, art. III, sec. 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties . . . to Controversies . . . between Citizens of different States . . ."

United States Judicial Code, c. II, sec. 24:

> "The district Courts shall have original jurisdiction as follows: . . . Where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000. and (a) arises under the Constitution or laws of the United States . . . *Provided, however*, That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section" (36 Stat. L. 1091).

. . . . . .

"*Eighth.* Of all suits or proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the Commerce Court" (36 Stat. L. 1092).

. . . . . .

"*Fourteenth:* Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, custom, or usage of any State of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law, of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States" (36 Stat. L. 1092).

Holt v. *Indiana Mfg. Co.*, 176 U.S. 72; 44 L. Ed. 374.
Twining v. *New Jersey*, 211 U.S. 97; 53 L. Ed. 97.
Moyer v. *Peabody*, 212 U.S. 78; 53 L. Ed. 410.
Brawner v. *Irwin*, 169 Fed. Rep. 964.
Giles v. *Harris*, 189 U.S. 475, 476; 47 L. Ed. 909.

The Town of Hadley has voted to conduct and is now conducting its affairs and schools upon United States Standard Eastern Time. The bill contains the allegation that the Town of Hadley is entitled annually to a sum exceeding $3500 as its allotment of state aid for public schools, and the bill contains the allegation that "it is provided by law that no town shall receive such payment unless it has, to the satisfaction of said defendant [the Commissioner of Education] complied with all the laws relating to public schools," and that said defendant, "advised by the Attorney General," intends "to rule and find that the plaintiff, the town of Hadley, by its aforesaid vote to conduct its affairs upon United States Standard Eastern Time, has failed to comply with the said Pretended Daylight Saving

Act in its alleged application to town and the schools of towns, "thereby depriving said plaintiff" the Inhabitants of the Town of Hadley, "of a large sum of money to which it would otherwise be entitled, and thereby depriving" said Inhabitants of said Town of Hadley "of rights, privileges, and immunities under the Constitution of the United States and of its property without due process of law," and the plaintiffs' prayer based upon the above allegations is, with respect to the Commissioner of Education and, so far as it is important, with respect to the defendant the Treasurer and Receiver General, for "an interlocutory writ of injunction directed against the defendant, Payson Smith, Commissioner of Education of the Commonwealth of Massachusetts, directing him to leave out of consideration, alleged violations of said Pretended Daylight Saving Act, in determining the rights of the plaintiff, the town of Hadley, and the other several towns of the Commonwealth" to their allotments as state aid for public schools. The plaintiffs contend that in this aspect of the case the Court has jurisdiction, and, provided the Massachusetts Act is unconstitutional, the defendants may be by this Court restrained from using an unconstitutional act of the state as the basis of penalizing 2900 people for obeying the paramount law of the land. The Attorney General says "the effect of any judgment against the Commissioner of Education would run against the money of the Commonwealth in the public treasury." This is not the plaintiff's theory; he would become personally liable, as his acts under a void statute would not and could not bind the state. Besides, the plaintiffs' prayer is that this defendant be restrained, along with the Attorney General, from using an invalid statute as the basis of withholding funds otherwise rightfully belonging to the inhabitants of Hadley. None of the cases cited by the Attorney General touch the real question here. The plaintiffs' theory is that this defendant, under mere color of his office, is wrongfully using an invalid statute in a way to deprive the inhabitants of Hadley of their constitutional

rights, privileges, and immunities (R. 7, 15, 17, 19, 21, 22, 28).

The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and treaties made in pursuance thereof; and it is these that are placed under the protection of Congress by the second clause of the Fourteenth Amendment; it protects from the hostile legislation of the states the privileges and immunities of citizens of the United State as distinguished from the privileges and immunities of the citizens of the states.

Slaughter House Cases, 16 Wall. 36, 130; 21 L. Ed. 394.

The Fourteenth Amendment establishes a citizenship of the United States distinct from the citizenship of the individual states.

COMPARISON OF THE STANDARD TIME ACT OF CONGRESS AND THE STANDARD TIME ACT OF MASSACHUSETTS.

Standard Time of Congress.

"Section 2. [Leaving out the provision applying standard time to the regulation of interstate carriers.] In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be

Massachusetts Daylight Saving Act.

"Section 3. In all laws, statutes, orders, decrees, rules and regulations relating to the time of performance of any act by any officer or department of this commonwealth, or of any county, city, town or district thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of this commonwealth, and in all the public schools and other institutions of the com-

understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed."

monwealth, or of any county, city, town or district thereof, and in all contracts or choses in action made or to be performed in the commonwealth, it shall be understood and intended that the time shall be United States standard eastern time as changed by this act."

Section 2 of the Act of Congress of March 19, 1918, provides that the United States standard time of the zone shall govern the time of the performance or non-performance of any act required by Federal statutes, orders, rules, and regulations to be performed or not performed "*by any person subject to the jurisdiction of the United States.*" And the Massachusetts Act provides that its standard of time shall govern the time in which any rights shall accrue or determine or within which any act shall or shall not be performed "*by any person subject to the jurisdiction of the Commonwealth.*" This imposes a dual standard of time upon all persons who are "*subject to the jurisdiction*" of both the United States and the Commonwealth of Massachusetts. All the individual plaintiffs are such persons, and many of the individual membership of the corporate plaintiffs are such persons. The citizenship of the United States is paramount to the citizenship of the Commonwealth where Federal rights and obligations are involved. A state's attempt to impose upon such dominant citizenship a double standard of time, incompatible with the Acts of Congress, must fail "because in that field it is the United States and not the State which represents" such citizens, and the Federal jurisdiction is superior.

See *Massachusetts* v. *Mellon*, 262 U.S. 447, 486:

> Sutherland, J.: "But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a state, as *parens patriae*, may institute

judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the state, under certain circumstances, may sue in that capacity for the protection of its citizens (Missouri v. Illinois, 180 U.S. 208, 241), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status."

The bill alleges facts which show inadequacy of remedies at law; no efficient remedy at law could be had even by a multiplicity of suits.

Cruickshank v. *Bidwell*, 176 U.S. 73, 79, 81.

In *Moneyweight Scale Co.* v. *McBride*, 199 Mass. 503, 506, it is said:

"That question is properly raised by a bill in which the plaintiff seeks to have the defendant enjoined from taking action under it which will affect his rights or property. (Board of Liquidation v. McComb, 92 U.S. 531.) Such a bill proceeds on the same footing as a bill to enjoin a public officer from doing an act *colore officii* which is in fact and in law outside his jurisdiction."

Cavanaugh v. *Looney, Atty. Gen.*, 248 U.S. 453, 456:

McReynolds, J.: "It is now a settled doctrine that individuals, who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are apt to commence proceedings either of a civil or criminal nature, to en-

force against parties affected an unconstitutional act, violating *the Federal Constitution* may be enjoined by a Federal Court of equity from such actions. Ex parte Young, 209 U.S. 123, 155, 156. W. U. T. Co. v. Andrews, 216 U.S. 165, 166, 167. H. H. Tel. Co. v. Los Angeles, 227 U.S. 278, 293. Green v. L. & Interurban R. R., 244 U.S. 499, 506.

In *Sperry Hutchinson Co.* v. *Kuhn, Atty. Gen.*, 212 Fed. 555, 556, the Court says:

> "In Ex parte Young, Mr. Justice Peckham, writing the opinion of the court, discusses at length the case of Filts v. McGhee, 172 U.S. 516, and distinguishes it from the case under consideration by saying: . . . The fact that the state officer, by virtue of his office, has some connection with the enforcement of the act is the important and material fact, and whether it arises out of the general law, or is specially created by the act itself is not material so long as it exists."

Truax v. *Raish*, 239 U.S. 33, 34; Ann. Cas. 1917-B; 283 L.R.A. 1916; 60 L. Ed. 131, 36 Sup. Ct. 7.

Equity has jurisdiction to restrain criminal prosecutions under unconstitutional enactments when the prevention of such prosecutions is essential to safeguarding rights to property.

Approved in *Crane* v. *Johnson*, 233 Fed. 335, upholding District Court's jurisdiction to enjoin state officers from enforcing void statute; *N. W. Halsey & Co.* v. *Merrick*, 228 Fed. 806, upholding Federal Court's jurisdiction to restrain enforcement of Michigan blue-sky law, which is in violation of the Federal Constitution.

Massachusetts v. *Mellon*, 262 U.S. 447, 483, 484:

Sutherland, J.: "No case of private rights or pri-

vate property infringed, or in danger of actual or threatened infringement, is presented by the bill. . . .

"This court has no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here"; quoting from the opinion in *Cherokee Nation* v. *Georgia*, 5 Pet. 1.

Prout v. *Starr*, 188 U.S. 537, 545; 47 L. Ed. 584:

Suit against state board of transportation and Attorney General to prevent enforcement of confiscatory statute fixing rates is not suit against state.

Approved in *Hopkins* v. *Clemson Agricultural College*, 221 U.S. 644; 35 L.R.A. (N.S.) 243; 55 L. Ed. 895; 31 Sup. Ct. 654, holding state agricultural college corporation was not such agent of state as to be immune from suit for damages caused by erection of dike and overflow of plaintiff's property; *Ex Parte Young*, 209 U.S. 155, 165; 14 Ann. Cas. 764; 13 L.R.A. (N.S.) 932; 52 L. Ed. 727, 730; 28 Sup. Ct. 441, holding Attorney General of state could be enjoined by Federal Court from enforcing railroad rate statute adjudged void by that Court; *Gunter* v. *Atlantic Coast &c. R. Co.*, 200 U.S. 284, 292; 50 L. Ed. 484, 487; 26 Sup. Ct. 252, ancillary injunction in Federal suit in aid of decree determining invalidity of state tax, in which jurisdiction obtained against state and officers, is not suit against state; *Louisville &c. R. Co.* v. *Bosworth*, 209 Fed. Rep. 386, 387, *holding suit lay in Federal Court against state officers to enjoin apportioning and certifying of assessment of property of railroad, alleged unconstitutional to counties for local taxation; Missouri Pac. Ry. Co.* v. *Jones*, 170 Fed. Rep. 126, and *Western R. of Alabama* v. *Railroad Commission*, 171 Fed. Rep. 701, both enjoining state officers from enforcing suspended statute fixing railroad rates; *Lindsley* v. *Natural Carbonic Gas Co.*, 162 Fed. Rep. 958, holding Federal Court

could enjoin Attorney General of state from instituting criminal proceedings for violation of void statute; *Seaboard Air Line Ry. Co.* v. *Railroad Commission*, 155 Fed. Rep. 809; *Southern Ry. Co.* v. *McNeill*, 155 Fed. Rep. 774; *Central of Georgia Ry. Co.* v. *McLendon*, 157 Fed. Rep. 967; *Louisville &c. R. Co.* v. *Railroad Commission*, 157 Fed. Rep. 953, 956, 960; and *Central of Georgia Ry. Co.* v. *Railroad Commission*, 161 Fed. Rep. 959, 960, 968, 969, all holding suit lay to enjoin state officers from enforcing void statute fixing railroad rates; *Consolidated Gas Co.* v. *New York*, 157 Fed. Rep. 882, holding suit lay to enjoin enforcement of void statute; *The W. J. Hingston*, 144 Fed. Rep. 562, upholding admiralty jurisdiction over suit to recover vessel enrolled under Federal law though state officers claim to hold same under state process issued under state fishery law, validity of which is attacked; *Railroad Commission of Louisiana* v. *Texas &c. Ry. Co.*, 144 Fed. Rep. 73; 75 C.C.A. 226, upholding injunction against state Railroad Commission's enforcement of its alleged illegal rate; *Illinois Cent. R. Co.* v. *Mississippi R.R. Commission*, 138 Fed. Rep. 331; 70 C.C.A. 617, upholding Federal jurisdiction over suit to restrain state Railroad Commission from enforcing order injuriously affecting interstate commerce; *Michigan R.R. Tax Cases*, 138 Fed. Rep. 230, upholding Federal jurisdiction of suit to enjoin state officer from collecting taxes.

In *Pierce, Governor*, v. *Hill Military Academy* and *Society of Sisters* v. *Same*, 268 U.S. 510, an interlocutory injunction was issued and upheld although the state Act complained of as unconstitutional did not go into effect until September, 1926. The defendant Lord was Governor of the state.

Constitution of the State of Oregon, Art. V, sec. 10:

"He [the governor] shall take care that all the laws be faithfully executed."

In these cases it is said:

> "Appellees are corporations, and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. . . . But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants [by threats to enforce the act] are exercising over the present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action. Truax v. Raish, 239 U.S. 33, 36 S. Ct. 7, 60 L. Ed. 131, L.R.A. 1916 D. 543, Ann. Cas. 1917 D 283; Truax v. Corrigan, 257 U.S. 312, 42 S. Ct., 124, 66 L. Ed. 254, 27 A.L.R. 375; Terrace v. Thompson, 263, U.S. 197, 44. . . ."
>
> "Generally, it is entirely true, as urged by counsel that no person in any business has such an interest in possible customers as to enable him to restrain the exercise of a proper power of the State upon the ground that he will be deprived of patronage. But the injunctions here sought are not against the exercise of any proper power."

And this case held that corporations engaged in conducting private schools may complain of the state's unwarranted interference with rights of parents, children, and teachers, who were not parties to the bill, but who are connected with the school or prospective patrons of it.

See *Truax* v. *Corrigan*, 257 U.S. 312, 331-333, for a discussion of the relations of the due-process clause and the equal-protection clause of the Fourteenth Amendment.

In *Terrace* v. *Thompson, Atty. Gen.*, 263 U.S. 197, it was held that, upon allegations of threats to enforce state law alleged to violate state and Federal Constitutions and a

treaty, suit was within the equity jurisdiction of the Federal District Court. The Attorney General (214) questioned the jurisdiction of the Court to grant equitable relief even if the statute was unconstitutional, but the Court said:

> "Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution whenever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable."

In *Greene* v. *Mayor of Fitchburg*, 219 Mass. 121, 127, which was a bill in equity to restrain the Mayor, Chief of Police, and City Treasurer from enforcing a void ordinance, the Court said (127):

> "We do not doubt that equity may enjoin public officers from taking action which will be injurious to the plaintiffs' property rights under an ordinance which is merely void as well as under a statute which is merely unconstitutional."

See *Shuman* v. *Gilbert*, 229 Mass. 225, 227, where it is said:

> "It is a general rule that the prosecution and punishment of crimes will not be restrained by a court of chancery. But there is an exception to this comprehensive statement. Jurisdiction in equity to restrain the institutions of prosecutions under unconstitutional or void statutes or local ordinances has been upheld by this court when property rights would be injured irreparably and when other elements necessary to support cognizance by equity are present."

The case shows that a Chancery Court will even restrain the powers of prosecuting officers in criminal matters when they proceed under a void statute.

It therefore appears that the Court has jurisdiction of this case and that the appellants have sustained their XIV, XV, XVI, and XVIII assignments of error, to wit:

> "XIV. The court erred in holding that chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 and entitled: 'An Act to Restore to the Citizens of Massachusetts the Benefits of "Daylight Saving," so called,' is constitutional and not violative of the constitutional rights, privileges and immunities of the plaintiffs and of the individual members of the corporative plaintiffs."
>
> "XV. The court erred in not holding that it had jurisdiction of the plaintiffs' bill of complaint."
>
> "XVI. The court erred in not holding that the plaintiffs are in a position to raise the legal questions relied upon by them and determined against them by the above entitled court on the 19th day of January, A. D., 1926."
>
> "XXIII. The court erred in dismissing the plaintiffs' bill of complaint by its order and decree entered in the above entitled cause on January 19, A. D., 1926."

ARGUMENT.

United States Standard Time is a Standard for the Measurement of the Measurable Aspects of Duration, and is National in Plan and Scope.

In covering this topic appellants will argue the following assignments of error, to wit: VI, VII, VIII, IX, X, XI, XII, XIII:

> "VI. That the court erred in not holding that Congress by the Act of March 19, 1918, entitled: 'An Act to save daylight and to provide standard time for the United States,' as amended, has established standard time for 'the territory of continental United States' and thereby occupied the entire field of legislation relative to standard time.

"VII. The court erred in failing to hold that the Act of Congress of March 19, 1918, entitled: 'An Act to save daylight and provide Standard Time for the United States' is assignable as the source of its vitality to Article I, Section 8, paragraph 5 of the Constitution which provides that: 'Congress shall have power to fix the Standard of . . . measures,' and in failing to hold that the Act of Congress of March 19, 1918, provides a standard for the measurement of time and that said Act was designed to standardize time for the United States."

"VIII. That the court erred in failing to hold that said chapter 280 of the Acts and Resolves of the Commonwealth of Massachusetts passed in the year 1920, sets up a time standard in conflict with the time standard provided for the territorial area of Massachusetts by the Act of Congress of March 19, 1918, entitled: 'An Act to save daylight and to provide standard time for the United States,' as amended."

"IX. That the court erred in holding that 'there is no conflict between the two Acts,' to wit: between the Act of Congress of March 19, 1918, entitled: 'An Act to save daylight and to Provide Standard Time for the United States,' as amended, and chapter 280 of the Acts and Resolves of Massachusettts passed in the year 1920 entitled: 'An Act to Restore to the Citizens of Massachusetts the Benefits of "Daylight Saving," so called.' "

"X. The court erred in holding that 'the power of the States in regard to measuring time is the same as over insolvency when there is no Federal bankruptcy law' and that 'the Federal Standard Time Act is not exclusive of State action on the same subject matter.' "

"XI. The court erred in holding that chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 entitled: 'An Act to Restore to the Citizens of Massachusetts the Benefits of "Daylight Saving,"

so called' is not repugnant to and does not contravene the Act of Congress of March 19, 1918, entitled: 'An Act to Save Daylight and to Provide Standard Time for the United States,' as amended by the Act of Congress of August 20, 1919, (c. 51, 41 St. L. 280) entitled: 'An Act for the Repeal of the daylight saving law,' as amended by the Act of Congress of March 4, 1921, entitled: 'An Act to Transfer the Panhandle and Plains section of Texas and Oklahoma to the United States Central Time Zone,' (41 St. L. 1446), and as amended by the Act of Congress of March 3, 1923, entitled: 'An Act to Amend an Act entitled "An Act to save daylight and to provide standard time for the United States," as amended' (c. 216, 42 St. L. 1434)."

"XII. The court erred in holding that chapter 280 of the Acts and Resolves of Massachusetts passed in the year 1920 entitled: 'An Act to Restore to the Citizens of Massachusetts the Benefits of "Daylight Saving," so called,' in its relation to the Act of Congress of March 19, 1918, as amended is not repugnant to or in conflict with the Constitution of the United States or the Constitution of the Commonwealth of Massachusetts."

"XIII. The court erred in failing to hold that all rights of the States to establish a standard of time ceased upon the passage of the Act of Congress of August 20, 1919, entitled: 'An Act for the repeal of the daylight saving law,' which provides that 'the standard time of each zone shall be returned to and thereafter be the mean astronomical time of the degree of longitude governing each zone as defined in Section 1 of said Act approved March 19, 1918' with no reference to interstate or foreign commerce."

Time is measured in nature by the motion of the heavenly bodies. The great natural divisions are the solar day, the lunar month, and the year. All other divisions of time are

conventional. A solar day is the period occupied by a single revolution of the earth on its axis in relation to the sun. The mean solar day of a place is the average length of the natural solar day in the year, and was the time intended to be indicated by ordinary clocks and watches before the mean solar or astronomical time of a given place was imposed upon other places of a different geographical location as a standard time. When the mean astronomical time or mean solar day of a particular place or meridian is arbitrarily imposed upon an area either east or west of that meridian, it displaces an infinite number of local mean solar days. This conventional or arbitrary use of the mean solar day of a given meridian as a standard day for wide areas then becomes a device or instrument "*used by man for the comparison of quantities*" of time, and falls within the definition of measures used by John Quincy Adams in his report to Congress, in 1821, on "Weights and Measures" (see Appendix, 57), in which he includes a discussion of "the mensuration of time" (Appendix, 64, 65).

Prior to 1880 there were about eighty different standard times used by the railroads in the United States. This caused inconvenience, confusion, and loss of life and property.

See Encyclopaedia Britannica (1910) (11th ed.), vol. XXVI, p. 987, "Time, Standard," from which the following historical summary is quoted:

> "The inconvenience (of the lack of a uniform time standard) was especially felt in the United States, where every railway, and even every long stretch of several great railways, had its own system. Thus it happened not infrequently that in a single station clocks would be found set to three different meridians, one for the road toward the east, another for the road toward the west, and a third for the meridian of the place, or local use.
>
> "A device now being generally adopted to do away with this confusion was planned in 1878-1879 by Mr.

(afterwards Sir) Sandford Fleming, and published in *the Journal of the Canadian Institute* for 1879. On the initiative of this organization, Mr. Fleming's proposals were officially communicated to the leading governments of the world with a view of securing an international unification of the methods of designating the hour of the day for common use. Naturally connected with the proposal was that *of a prime meridian*, from which all longitudes should be reckoned. The United States invited an International Conference, which was held in Washington in 1884, for the purpose of proposing a standard meridian to which longitudes and times should be referred [see Appendix for Acts of Congress authorizing International Time Conference].

"Before this conference was called the railway managers of the United States [in 1883], after long discussion, adopted the system. Its fundamental idea was that twenty-four standard meridians should be established 15 degrees apart in longitude, starting from the meridian of Greenwich and extending around the globe. Then on each meridian the local time would differ from Greenwich time by some entire number of hours. At every point on the globe the time to be adopted for common use was that of the nearest standard meridian. These meridians would therefore mark the central lines of twenty-four zones, within each of which the time to be adopted would be uniform, but which would change by an hour on passing from one zone into another."

The International Congress of the Nations of the World convened at Washington in October, 1884, upon the invitation of the United States, and voted to adopt Greenwich as the zero or prime meridian, according to the Fleming plan (see Appendix, 98, Extract from President Arthur's Message).

In support of the argument that the Act of Congress "To Provide Standard Time for the United States" derives its vitality from that clause of article I, sec. 8, of the Federal Constitution which says that Congress shall have power to provide standards of measure, I point to the following:

First. Prior to 1881 the legal time was everywhere the time of the meridian of the place, or sun time, and the Courts took judicial notice of such time (see Sir Sandford Fleming's proposals, Appendix, 92).

The leading case on the point of whether the local community can fix its own standard of time, in which the Chief Baron of the English Exchequer Court laid down in 1858 the rule, is the case of *Curtis* v. *March* (1858), 3 H. & N. 866:

This was an action in ejectment. The time appointed for the sitting was 10 a. m., and the learned judge took his seat on the bench punctually at 10 by the clock in Court. The cause was then called and the plaintiff's counsel commenced his address to the jury, but as the defendant was not present and no one appeared for him, the learned judge directed a verdict for the plaintiff. The defendant's counsel then entered the Court and claimed to have the cause tried on the ground that it had been disposed of before 10 o'clock. At that time it wanted one minute and a half to 10 by the town clock. The clock in Court was regulated by Greenwich time, which was some minutes before the true time at Dorchester, and in the Court of Exchequer it was said (p. 867) by Pollock, C.B.:

> "We are all of the opinion that the defendant ought to have an opportunity of trying the cause. . . .
>
> (P. 868) "I cannot assent to the argument that the town counsel of any place may by their resolution declare that Greenwich, or any other time, shall be the time of the place; for I cannot help seeing the consequences. The difference between Greenwich time and the real time at Carlisle is several minutes, and therefore if a town counsel might determine the time, they

might make a man born on a different day from that on which he was really born. Or suppose that by act of parliament a person was bound to go out of office on a particular day, the town council by altering the time might put him out of office today instead of tomorrow. So, if a person is entitled to a bonus from an insurance office in the event of his living to a certain period, that must be decided, not by the town council adopting Greenwich time, but by the mean time of the place. Ten o'clock is 10 o'clock according to the time of the place, and the town council cannot say that it is not, but that it is 10 o'clock by Greenwich time. Neither can the time be altered by a railway company whose railway passes through the place, nor by any person who regulates the clock in the town hall. A person hearing that the Court would sit at 10 o'clock would naturally understand that to mean 10 o'clock by the time of the place, unless the contrary was expressed. In this case, looking at the difference of time (of which we are bound to take judicial notice), the defendant was in Court before 10 o'clock."

See *Rochester German Insurance Co.* v. *Peasles-Gaulbert Co.*, 120 Ky. 752, 757; 87 So. W. 1115, 1117; 1 L.R.A. (N.S.) 364; 9 Ann. Cas. 324:

This case is of peculiar interest because of the fact that it recognizes as early as 1905 the standard time of the railroad systems, adopted in 1883, as the time which may govern the legal rights of parties. It seems to be the first case to do this. It recognizes "central standard time, based upon the mean time of the 90th meridian west of Greenwich." This is now Standard Central Time as established by the Act of Congress of March 19, 1918.

But sun time was the time usually adopted by the Courts prior to the Act of Congress of March 19, 1918.

Texas Tram. & L. Co. v. *Hightower*, 6 L.R.A. (N.S.) 1046, *Parker* v. *State*, 29 So. W. 480.

The case of *Ellard* v. *Goodell*, 203 Ala. 476; 83 So. 568, 569, appears to be the first case wherein the Congressional Standard of Time Act has been recognized by the Courts as a standard measure of duration. Judgment was entered on March 19, 1918. The bill of exceptions was presented to the presiding judge on June 17, 1918, "at 11:15 p. m. Central standard time and 12:15 a. m. June 18, 1918, present national legal time. . . ." The motion to strike proceeds on the theory that the bill of exceptions was not presented within ninety days after judgment entered, as required by Code section 3019. As appears, the bill was presented forty-five minutes before the expiration of the ninetieth day if measured by Central Standard Time, but its presentation was fifteen minutes late if measured by Daylight Saving Time. Held that the plaintiff could not be deprived of one hour of the time accorded him by the statute, and the period was computed from Central Standard Time in force at the time of judgment, and not from sun time, which would have been entirely different.

Second. The method proposed by Sir Sandford Fleming in 1879 for reckoning and measuring time, to wit, (1) the adoption of a prime meridian (Greenwich) and (2) the establishment of standard meridians for the determination of local days, is the exact method adopted by both the United States Congress and the State of Massachusetts as the base of their standards for the measurement of time.

Third. The report to Congress which accompanied the bill that became the Act of March 19, 1918, contains the following statement: "*This is a standard for the measurement of time*" (see Appendix, 16, 17).

Fourth. A comparison of section 2 of the Congressional Act with section 3 of the Massachusetts Act discloses a striking similarity in language as to the general application of the standards; and it is clear that Congress did not derive power under the interstate-commerce clause to fix the standard of time for the performance of any act by its officers and departments or by any person subject to its jur-

isdiction; so far as the Act of March 19, 1918, is a time standard, it perforce must be assignable to the standard of measures clause of the Constitution or be invalid; and for the purposes of this case the Attorney General has admitted its validity in argument (see remarks of Senator Kellogg, now Secretary of State, in report accompanying bill to Congress, set forth in Appendix, 18).

Fifth. In 1894 Congress established eight standards of electrical measure. Electricity is as mysterious and little understood as time; but both are capable of definite measurement. We do not know how time originated, what gave it impulse, whether it is unending, or whether there will finally arrive a condition "when time shall be no more," but we do know that both time and electricity have measurable aspects. By the Act of July 12, 1894 (see Appendix), Congress established the standard of electrical measurements, and by the Act of March 19, 1918, Congress adopted and enacted into law the basic principles of Sir Sandford Fleming's proposed prime meridian (Greenwich), to wit, time zero, and his standard-hour meridians, fifteen degrees or one hour distant from each other, the first being fifteen degrees from the prime meridian, by which he proposed to reduce local days to twenty-four in number for the period of each diurnal revolution of the earth, thereby making it unnecessary that the precise geographical position be specified as an important and otherwise indispensable element of time; the time of mean astronomical time of the parallel of longitude 75° west from Greenwich controls the time and is the time for the entire eastern zone under the Act of Congress, and the mean astronomical time of the parallel of longitude 60° west from Greenwich controls the time and is the time for the entire State of Massachusetts from April to October, if the Massachusetts Act is valid, although longitude 60° west from Greenwich is more than 550 miles east of the easternmost part of the territorial area of Massachusetts, which is in its entirety a component part of the eastern zone as estab-

lished under the Act of Congress of March 19, 1918. (See maps entered as exhibits and made a part of the record, Sir Sandford Fleming's proposals made nearly fifty years ago, outlined in Appendix, now adopted by the entire civilized world as the basis of time measurement and reckoning. See also the Act of Congress of July 12, 1894, establishing standard for electrical measurements, also in Appendix.)

Sixth. Time is defined in all dictionaries, and especially in those dealing with the legal significance of words, as "a *measure of duration.*"

See Webster's New International Dictionary, which defines "Time" as "the measurable aspect of duration"; "Absolute time is conceived as flowing at a constant rate . . ."

Century Dictionary: "Time is duration set out by measures."

Black's Law Dictionary (2d ed.): Time: "The measure of duration."

Bouvier's Law Dictionary (3d ed.): Time: "The measure of duration."

Seventh. Congress uses the words "standard time" fourteen times in the Act of March 19, 1918, and therein specifically declares its intention "*of establishing the standard time of the United States.*" The word "standard" in this connection must be given its ordinary significance.

See Webster's New International Dictionary:

Standard (n): (4) "That which is set up and established by authority as a rule for the measure of quantity, weight, extent, value or quality."

Standard (a): (1) "Being, affording, or according with, a standard for comparison and judgment, *as standard time;* standard weights and measures; a standard authority."

See Bouvier's Law Dictionary (3d ed.):

> Standard: "A measure to which all other measures must correspond."

Eighth. Congress in the Act of August 20, 1919, uses the words "standard time" four times, and therein specifically provides that "*the standard time of each zone shall be returned to and thereafter be the mean astronomical time of the degree of longitude governing each zone as defined in Section I of said Act approved March 19, 1918.*" These words denote an unmistakable intention, entirely devoid of ambiguity, to retain the standard time previously adopted, and they are the words which Congress used in overriding by at least a two-thirds vote an earlier veto of the President.

Ninth. The Act of March 19, 1918, which defines and establishes "Standard Time" for continental United States repeals all conflicting Acts, which emphasizes the intention of Congress to occupy the entire field of legislation so far as a standard measure of time is concerned.

Tenth. The Interstate Commerce Commission, before defining the zone boundaries, as authorized by the Act of March 19, 1918, sent out notices of their hearings to the Governors, Attorneys General, and Railroad Commissions of all the states (51 I.C.C. 276). And when defining the boundary lines between the zones the Interstate Commerce Commission (51 I.C.C. 281) says: "There is a relationship between habits and employments and the hours of the day as expressed by time pieces which cannot be impaired without great inconvenience; and that public health and prosperity will best be subserved when *normal standards of time are observed in every locality where they can be made applicable.* This statement finds support in the record that in some sections the continued use by carriers *of inappropriate time standards is even inimical to the maximum production output essential to the national defense.*" And again the Commission says (51 I.C.C. 282): "The inertia

of things as they are should not deprive any portion of the country of the benefits of *a well adjusted time standard.*" And again (51 I.C.C. 283) the Commission says: "Because of the inconveniences which attend upon the use of dual standards of time within a community, the zones are to be made as compact and symmetrical as possible." In this Interstate Commerce Commission report (51 I.C.C. 273), wherein the Commission discusses the establishment of the zones, a power delegated to it under the Act of March 19, 1918, the words "standard time" are used in combination fifty-five times, exclusive of the appendix to this report, in which the Commission actually fixes the zone boundaries. And in the City of Detroit case the Interstate Commerce Commission (71 I.C.C. 78, 80) says: "The example of Detroit has been followed or has forced like action by scores of interior Michigan cities, and a confused condition exists and will continue which threatens the integrity of the *standard time scheme of Congress.*" Does this not indicate that the Interstate Commerce Commission interprets the Act of March 19, 1918, as a Congressional Standard Time scheme, applicable to every part of the United States?

Eleventh. In the Daylight Saving Act, so called, which the plaintiffs declare conflicts with United States Standard Time, the words "standard time" are used twelve times, and in the amendment to that Act six times. And with striking candor section 3 of this Act provides that "the standard time in this commonwealth from April until October of each year shall be *United States Standard eastern time as changed by this act.*"

Twelfth. From the very nature of the case Standard Time should be under the control of Congress; otherwise we are taking a long step backward and the work of the International Congress held at Washington in 1884, at our invitation, and then considered an important step in the policy of establishing uniformity in standards of measure, will be undone. This is because the subject-matter of the

power is national in its scope and can be properly regulated only by a uniform system.

And the geographical outlines of the several states present no possible division lines which, if used as the demarcation of Standard Time limits could produce that uniformity which our leading statesmen, from George Washington down, have considered most desirable. To systematize time the whole of continental United States must be and was included in the Act of Congress of March 19, 1918 (see Appendix for the views of Washington, Jefferson, and John Quincy Adams).

If the subject-matter of the power is of such a nature as to relate to the concerns and the prosperity of the nation as a whole, and can be properly regulated only by a uniform national law, and if any action by the several states upon it would be inconsistent with that plenary control of Congress which alone can effectuate these objects, then the authority of Congress is exclusive, though not made so in express words.

Leisy v. *Hardin*, 135 U.S. 100; 10 Sup. Ct. Rep. 681; 34 L. Ed. 128:

There Fuller, C.J. says (34 L. Ed. 132):

> "It was stated in the 32nd number of the Federalist that the States might exercise concurrent and independent power in all cases but three, first where the power was lodged exclusively in the Federal Constitution; second where it was given to the United States and prohibited to the States; third, where, from the nature and subjects of the power, it must be exercised by the national government exclusively. But it is easy to see that Congress may assert an authority under one of the granted powers, which would exclude the exercise by the States upon the same subject of a different but similar power, between which and that pos-

sessed by the general government no inherent repugnancy existed.

"Whenever, however, a particular power of the general government is one which must be necessarily exercised by it, and Congress remains silent, this is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed, but, on the contrary, the only legitimate conclusion is that the general government intended that the power should not be affirmatively exercised, and the action of the States cannot be permitted to effect that which would be incompatible with such intention. Hence, inasmuch as interstate commerce, consisting in transportation, purchase, sale and exchange of commodities, is national in its character, and must be governed by a uniform system, so long as Congress does not pass any law to regulate it, or allowing the States so to do, it thereby indicates its will that such commerce shall be free and untrammelled. Mobile County v. Kimball, 102 U.S. 691 [26:238]; Brown v. Houston, 114 U.S. 622, 631 [29:257, 260]; Wabash St. L. & P. R. Co. v. Illinois, 118 U.S. 557 [30:244]; Robbins v. Shelby County Taxing District, 120 U.S. 489, 493 [30:694, 696]."

Thirteenth. The several states have all adopted the standards used by the United States since the resolution of Congress of June 14, 1836. By that resolution Congress adopted no standards; it provided merely a duplicate set of standards used by the United States and in 1838 Congress provided sets of standard balances for each state, as it did also a set of metric weights and measures in 1866 when Congress enacted that it should be permissible to use the metric system (see Appendix, 77). All this shows clearly that Congress, by the mere adoption by the United States of a standard, gives that standard the legal vitality of a standard established by law. And the conclusion fol-

lows that no state may erect a standard of its own of any sort when that standard or device is applied to the comparison of quantities or qualities and applied to a subject-matter national-wide in its scope.

The Massachusetts enactments, which clearly show a recognition of this principle, do not differ in the main from similar Acts of the other states (Appendix, 78) are as follows:

Massachusetts Gen. Laws, c. 98:

> "Section 3. . . .
>
> "Such standards shall be kept by the director, and he shall, at least once in five years, cause them to be compared with the standards of the United States government, and, if necessary, corrected to agree herewith.
>
> "Section 4. The state standards shall also include all weighing and measuring devices received from the United States under the resolution of congress approved June 14, 1836, and all other weighing and measuring devices received from the United States as standard weights and measures, and such as have been or shall be supplied by the commonwealth and certified by the national bureau of standards. . . ."

It is elemental that the Constitution of the United States is a delegation of authority, and that Congress may exercise only such powers as have been conferred upon the Federal government by the Constitution.

It follows, and this proposition will not be disputed, that every Act of Congress must be assignable to some particular part of the Constitution as the source of its existence, as the original impulse of its vitality.

We contend, first, that Congress gets the power "*To Provide Standard Time for the United States*," which it exercised in the Act of March 19, 1918, in providing a Standard Time for the United States from article I, sec. 8,

par. 5, of the Constitution, which says that "*The Congress shall have power to fix the Standard of . . . Measures*"; and such powers, even before congressional action, is exclusive of state action on that subject-matter, because it requires for its consummation a plan national-wide in its scope. Even if we are wrong in this, action by Congress on the subject-matter would suspend or annul the power of the states to act thereon thereafter.

Having, as we contend, from sources which cannot mislead, established that the Act of Congress of March 19, 1918, provides a standard of time for continental United States, and that said Act originates in and is referable to the "standard of . . . measures" clause of the Constitution, it follows that the standard of time designated by said Act is the paramount law of the land, because it is a law of the United States made pursuant to the Constitution.

> Article VI, sec. 2: "This Constitution, and the Laws of the United States which shall be made in *Pursuance* thereof; and all Treaties . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
>
> *Sturges* v. *Crowninshield*, 4 Wheat. 122; 4 L. Ed. 529.

Power of Congress is exclusive, whenever terms in which it is granted, or its nature, require that it should be exercised exclusively by Congress. But mere grant of power to Congress does not necessarily imply prohibition upon states to exercise such power; if it is not such as to require its exercise by Congress exclusively. States are free to exercise it until Congress has acted.

> *Commonwealth* v. *Nickerson*, 236 Mass. 293, 296, where Rugg, C.J., discusses this rule.

Houston v. *Moore*, 5 Wheat. 1, 47-48; 5 L. Ed. 1, 30, 31:

Mr. Justice Story: "Questions of this nature are always of great importance and delicacy. They involve interests of so much magnitude, and of such deep and permanent public concern, that they cannot but be approached with uncommon anxiety. . . .

"Sitting here, we are not at liberty to add one jot of power to the national government beyond what the people have granted by the constitution; and, on the other hand, we are bound to support that constitution as it stands, and to give a fair and rational scope to all the powers which it clearly contains. . . .

"There is this reserve, however, that in cases of concurrent authority, where the laws of the States and of the Union are in direct and manifest collision on the same subject, those of the Union being 'the supreme law of the land,' are of paramount authority, and the State laws, so far, and so far only, as such incompatibility exists, must necessarily yield."

Unless the subject-matter requires a national-wide plan, the rule stated in *Ogden* v. *Saunders*, 12 Wheat. 213, 276; 6 L. Ed. 606, 627, by Mr. Justice Washington holds:

"For, in this, as in many other instances in the constitution, the grant implies the right to assume and exercise a power over the subject which is, in its nature, merely potential, and dependent on the discretion of Congress . . . to enter on the exercise of a power that may supersede it."

The regulation of weights and measures having been given by the Constitution to Congress, it is doubtful whether the enactments of any state on that subject are of any validity whatever, even though Congress have wholly neglected to attend to this regulation.

The Miantinomi (1855), 3 Wall. Jr. (C.C.) 46; 17 Fed. Cas. No. 9,521, wherein the Court said:

"Men may contract either with or without its sanction to make the pound their unit, and to sell at so much per one hundred pounds, or so much for two thousand pounds; and they may call it, or any other multiple of a pound, a ton, if the parties to the contract agree to do so. But this Act, if it have any efficacy whatever (which, as I have intimated, is doubtful), cannot be invoked to change the terms of a contract contrary to the consent of one of the parties, or to authorize vendors who buy coal at one standard of weight to sell it at another, and thus extort from purchasers an increased price for a diminished quantity."

The above case appears to be the only time this question has been before the Federal Courts, but the state Courts have not taken the view of the Federal judge in the case just cited, as appears from the following decisions:

California: The regulation of weights and measures by a state is valid so far as not in conflict with any Act of Congress, and a California statute providing that "the hundred weight consists of one hundred avoirdupois pounds, and twenty hundred weight constitute a ton," is valid.

Higgins v. *California Petroleum &c. Co.* (1895), 109 Cal. 310; 41 Pac. 1087.

Iowa: "Congress has the power 'to fix the standard of weights and measures.' This power it has never exercised. And until it is exercised, the respective states may, for themselves, regulate weights and measures."

Harris v. *Rutledge* (1865), 19 Iowa, 390.

Kentucky: "Congress has not passed any law to fix the standard of weights and measures, as it is authorized to do by the Constitution. The laws of this state, therefore, govern the subject."

Caldwell v. *Dawson* (1862), 4 Met. (Ky.) 123.

Ohio: "It is quite apparent, therefore, that the power to adopt and prescribe a standard of weights and measures was not conferred by the Constitution exclusively upon the Congress of the United States, and that it is within the power of the legislatures of the several states to enact laws fixing and regulating standards of weights and measures in all respects in which Congress has not legislated upon the subject."

Williams v. *Saudles* (1915), 93 Ohio St. 92; 112 N.E. 206.

Pennsylvania: The mere grant to the federal government of the power to fix the standard of weights and measures did not extinguish state authority over the same subject.

Weaver v. *Fegely* (1857), 29 Pa. St. 30.
See *Evans* v. *Myers* (1855), 25 Pa. St. 114.

Summarizing the argument:

The Act of March 19, 1918, must be found to have its source of origin in the standard-of-measure clause of the Constitution, because:

First. Time is everywhere defined as "A measure of duration"; "the measurable aspects of duration."

Second. "Standard" is defined as "A measure to which all other measures must correspond."

Third. Congress uses the words "*standard time*" fourteen times in the Act of March 19, 1918, and the report of the committee accompanying the bill to Congress contained these words: "*This is a standard for the measurement of time.*"

Fourth. The Act of Congress of August 20, 1919, in repealing the daylight feature of the Act of March 19, 1918, uses the words "*standard time*" four times, and says: "*The Standard Time of each zone shall be returned to and thereafter be the mean astronomical time of the degree of longitude governing each zone. . . .*"

Fifth. The Interstate Commerce Commission, performing its function of fixing the boundary line between the zones, in a report discussing the matter, uses the words "*standard time*" in combination fifty-five times, and in 71 I.C.C. 78, 80, the Commission says: "The example of Detroit has been followed or has forced like action by scores of interior Michigan Cities, and a confused condition exists and will continue *which threatens the integrity of the standard time scheme of Congress.*"

Sixth. In the Massachusetts Act, which plaintiffs contend is repugnant to the Standard Time Act of Congress, the words "*standard time*" are used twelve times, and it is there stated that the standard time of the Commonwealth from April to October of each year "*shall be*" United States Eastern Time "*as changed by this act,*" which provides a conflicting standard.

Seventh. The Act of Congress and the Massachusetts Act impose each its special brand of time in the matter of the observance of statutes, orders, rules, and regulations, etc., upon "*any person subject to*" its "*jurisdiction.*" This imposes a double standard of time upon a person who is subject to the jurisdiction of both the state and the nation, and that includes all.

Eighth. Prior to 1881 there was no legal time in existence anywhere on earth except sun time or the time of the meridian of the place; if you walked down the street toward the east or toward the west 300 feet or less you were theoretically on another meridian, and the time of your new position had theoretically changed. The change was approximately 4 minutes for each 50 miles; going west you set your watch back; going east, ahead. A standard was

necessary as the means of rapid conveyance and the intercommunication became widespread.

Ninth. In 1884 the United States called an international conference for the purpose of proposing a standard meridian to which longitudes and times should be referred, and this convention adopted Greenwich as the zero longitude.

Tenth. On March 19, 1918, Congress adopted the precise system of measuring and reckoning time proposed by Sir Sandford Fleming, in 1879, which system had provided the impulse for calling the international convention convened by the United States in 1884, and which system had been put into practice by the railroads for their own protection and convenience in 1883.

Eleventh. Massachusetts adopted this standard system of time measurement in 1920, in the Act complained of by plaintiffs.

Twelfth. Into the hands of all congressmen was put, along with the bill which became without change the Standard Time Act of Congress, a report which contained the statement, upon eminent authority: "*This is a standard for the measurement of time.*"

Thirteenth. Congress has no power under the interstate-commerce clause to regulate by a Standard Time the Courts in their sittings and adjournments, etc., or the time of performance of any act by persons subject to the jurisdiction of the United States; clearly this is no part of interstate commerce; such power, so far as it is a standard to which the requirements of Congress must be referred, cannot be assignable to any clause of the Constitution other than the standard-of-measures clause.

Fourteenth. When the other factors are constant and United States Standard Eastern Time and Massachusetts Standard Time are applied as the only varying factors to the same set of facts, you can never get the same result, because both are standards "*to which all other measures must correspond.*"

Fifteenth. Congress has fixed the standard for measure-

ment of electricity and must therefore possess power under the same clause of the Constitution to fix a standard for the measurement of time.

Sixteenth. Both the Act of Congress and the Massachusetts Act provide standards for the measurement, reckoning, and determination of time, each of which eliminated the precise geographical position as an essential and important element of determining the time of a given place; such power is sovereign in its nature and cannot rest in the hands of Federal authority and in the Legislatures of forty-eight states at the same time under our governmental theory.

Seventeenth. Massachusetts adopts for five months of each year one of the standard twenty-four local days proposed by Sir Sandford Fleming in 1879, and Congress adopts another of said standard local days; and both are made to apply to the same territorial area, so far as this Commonwealth is concerned.

Eighteenth. Massachusetts delegates a power to Congress, Congress acts upon that power, and thereafter Massachusetts exercises the same power which she and all the other states conferred upon Congress by the Constitution.

Much consideration has been given to the question of whether the Act of Congress of March 19, 1918, is a standard and therefore derives its vitality from the standard-of-measures clause of the Constitution, because of the importance of such a relation upon the constitutionality of the Massachusetts Act, and because of the bearing of such a connection upon the question of jurisdiction:

Assuming that the Act of Congress of March 19, 1918, derives its vitality, in part at least, from the standard-of-measures clause of the Constitution, then it follows in any event that Congress has occupied the entire field of legislation, and no state can now undertake to provide a standard which is repugnant to or incompatible with that set up by Congress.

See *Commonwealth* v. *Nickerson*, 236 Mass. 281, 288-309—

where, although the case arose under the Eighteenth Amendment in connection with the "concurrent power" specifically left in the states by the words: "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation," Rugg, C.J., has made a masterly review of many cases, and has clearly indicated the principles of constitutional construction which appear to apply to the case at bar. He says (292):

> "There are no words in the Constitution as to the power of States over bankrupteies. Until Congress has acted by passing a general bankrupt law the several states may enact laws of that nature, *which are suspended when Congress acts upon the subject.* . . . Those decisions rest upon the principle that a uniform law on bankrupteies throughout the United States cannot readily co-exist as operative legislation with various states' laws covering the same field . . ."
>
> (293) "In cases where Congress has the right of exclusive jurisdiction and puts forth its power to cover the field, then State legislation ceases to have [294] efficacy. That is because Congress has under the Constitution the power of exclusive dominion in the field."

And the case of—

Thompson v. *District of Columbia*, 21 App. Cas. (D.C.) 395—

made so much of by the Attorney General, in both oral argument and upon brief, was a case over the prosecution of a milk dealer for use of short measure in selling milk. The case was therefore one relating to the measure of a commodity, and not within the class of measurements to which electricity and time belong. The Court was consequently speaking in terms of commodities, and its opinion

in that particular case, founded upon its especial circumstances, is not applicable to cases under circumstances essentially different for the purpose of limiting the standard-of-measures clause of the Constitution to commodities only. (See *Brooks* v. *Marbury*, 11 Wheat. 75; 6 L. Ed. 423, where Chief Justice Marshall says of a certain point: "It is not supposed to be decided in Hamilton v. Russell," which is another way of saying that the positive authority of a decision is co-extensive only with the facts on which it is founded.) But the Court did say in *Thompson* v. *District of Columbia*, *supra*, so much relied upon by the defendants in an attempt to fetter and make obsolete our Constitution, that (402)—

> "The power conferred in connection with that to coin money, regulate the value thereof and of foreign coin, was in pursuance of the general policy that dictated the delegation of the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes. It *effectually prevented the several States from fixing standards that vary* and hence prove a hindrance to trade and interchange of commodities. The standard weights and measures of England were brought to the colonies and governed therein as a part of the common law."

So far as this case is a precedent of importance in the case at bar, it sustains the contentions of the plaintiffs.

The vitality of our Constitution is in nothing better shown than in the fact that the problems controlled and interpreted by it at one time are quite different from those submitted to its control and interpretation at a latter date. The Attorney General would load the Constitution into the ox-cart of our great-grandfathers and contend that was the appropriate "historical and traditional background" by which it should be interpreted, construed, and controlled. Such a position would block progress and prevent the solu-

tion of new problems, and it would have prevented Congress from establishing the standards of electrical measures now in force.

From the committee report sent in with the bill which became the Act of March 19, 1918 (for full text of report see Appendix):

(P. 1) "Agitation in favor of what has come to be known quite generally as 'daylight saving' is wide spread throughout the United States. *The measure is designed to standardize time for the United States and to advance the standard time one hour during a period of five months every year, beginning at 8 o'clock antemeridian of the last Sunday of April and terminating at 2 o'clock antemeridian of the last Sunday of September.*"

(P. 7) "Prof. Harold Jacoby, an eminent astronomer, appeared in support of the legislation, and declared that no scientific reasons or conditions exist why it should not be enacted. His statement is in part as follows: . . . We think that this can be put into the laws of the United States under the provision of the Constitution, which gives Congress power and makes it its duty to coin money, regulate the value thereof and of foreign coin, and fix the standards of weights and measures. *This is a standard for the measurement of time*, and under the power of the Constitution we feel that Congress can act, and we feel morally certain that no one will by a suit attack any act that might be passed in this way . . .

(P. 8) "Senator Kellogg. Let me ask you this other question. *Do you place the validity of this act on the provision of the Constitution authorizing Congress to fix a standard of measures to govern time as well as everything else? This bill also might possibly be sustained as to one provision of it as to regulating the time of interstate carriers, might it not?*"

"Prof. Jacoby: Yes, sir."

"Senator Kellogg: Assume that it was valid as a regulation of interstate carriers, and invalid as to where it undertook to fix certain other rules of time, would it be effective if it went into effect for that purpose, would it be accepted by everybody, do you think?"

"Prof. Jacoby: I think so . . ."

If the Act of March 19, 1918, was Not Enacted under the Standard of Measures Clause, it Necessarily must Secure its Vitality from the Commerce Clause of the Constitution.

But we urge at the outset that an Act of Congress is not a regulation of interstate commerce unless it appears fairly to be so upon construing the whole scope of the law, and not a regulation of some other subject which Congress is not empowered to regulate. The Commerce Clause is overworked; it is a jaded horse.

We also urge that Congress in fact established a "Standard Time for Continental United States," and then, as a distinct and separate step, applied that standard to all Government activities, including the railroads, then a Government activity, for if that had not been done, as we shall see later, the Government would not be held to have been included in the general words of the Act.

The argument now follows the appellants' XVIII assignment of error, to wit:

"XVIII. The court in holding that Congress has provided a 'standard time applicable only: (1) to the movement of common carriers engaged in interstate and foreign commerce,' erred in not also holding that chapter 280 of the Acts and Resolves of Massachusetts entitled: 'An Act to Restore to the Citizens of Massachusetts the Benefits of "Daylight Saving," so called,' is a conflicting and hostile piece of legislation and in its natural and necessary operation obstructs and inter-

feres with interstate and foreign commerce when put in operation concurrently with United States Standard Time applied solely to interstate and foreign commerce."

The appellants contend that, assuming for any reason it is held that the Act of Congress of March 19, 1918, is not assignable to the "standard . . . of measures" clause of the Constitution as the authoritative source of Congressional power in its passage, then this Standard Time Act necessarily must be referable to the "interstate commerce" clause as its genesis, for the general-welfare clause, widely misunderstood, is merely a limitation upon taxation, and only says that all taxes must be for the general welfare, etc.

Let us now assume that we are dealing with an Act of Congress passed under power conferred by the "interstate commerce" clause. In this position we assert that the Massachusetts Act in its relations to the Standard Time Act of Congress is *a conflicting and hostile piece of legislation, and in its necessary operation obstructs and burdens interstate commerce.*

> *Pennsylvania* v. *W. Virginia; Ohio* v. *W. Virginia*, 262 U.S. 553, 596:
>
> Van Devanter, J.: "By the Constitution Article I section 8 cl. 3, the power to regulate interstate commerce is expressly committed to Congress and therefore impliedly forbidden to the State. The purpose of this is to protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile laws and to insure uniformity in regulation. It means that in the matter of interstate commerce we are a single nation—one and the same people. All the states have assented to it, all are alike bound by it, and all are equally protected by it. Even there power to lay and collect taxes, comprehensive and necessary as that power is, cannot be exerted in a way that in-

volves discrimination against such commerce. Ward v. Maryland, 12 Wall. 418, 430; Welton v. Missouri, 91 U.S. 275, 280; Webber v. Virginia, 103 U.S. 344, 350; Coe v. Errol, 116 U.S. 517, 625-626; Guy v. Baltimore, 100 U.S. 434, 442-443; Robbins v. Shelby County Taxing District, 120 U.S. 489, 498.

"Natural gas is a lawful article of commerce and its transmission from one State to another for sale and consumption in the latter is interstate commerce. A state law, whether of the state where the gas is produced or that where it is sold, *which by its necessary operation prevents, obstructs or burdens such transmission is a regulation of interstate commerce—a prohibited interference.* West v. Kansas Natural Gas Co., 221 U.S. 239; Public Utilities Commission v. Landon, 249 U.S. 236, 245; United Fuel Gas Co. v. Hallahan, 257 U.S. 277; Dakne Walker Milling Co. v. Rondurant, 257 U.S. 262, 290-291; Lemke v. Farmers Grain Co., 258 U.S. 60; Western Union Tel. Co. v. Foster, 247 U.S. 105; Minnesota v. Barber, 136 U.S. 313; Brimmer v. Ribman, 138 U.S. 76."

See *Gibbons* v. *Ogden*, 9 Wheat. 1, which established rule of Federal Court today, there laid down by Chief Justice Marshall, that the commercial power is a whole, incapable of division, and exclusive, therefore, of a like power in a co-ordinate sovereignty.

Northern P. R. Co. v. *Washington*, 222 U.S. 370; 5 L. Ed. 237; 32 Sup. Ct. 160:

Right of state to apply its police power for the purpose of regulating interstate commerce exists only from the silence of Congress on subject, and ceases when Congress acts or manifests its purpose to call into play its exclusive power.

Enactment by Congress of Hours of Service Act of 1907, although statute did not take effect for year after its enact-

ment, manifested purpose of controlling hours of employees engaged in interstate commerce, and state laws on subject are ineffective from date of enactment of Federal law.

Delaware &c. R. Co. v. *Troxell*, 200 Fed. 45; 118 C.C.A. 272—

holding action for death of employee occurring after passage of Federal Employers' Liability Act is governed by such Act where facts pleaded bring it within the terms of Act, although recovery is erroneously sought under state law which it superseded.

State v. *Harper*, 48 Mont. 463; 51 L.R.A. (N.S.) 157; 138 Pac. 498—

holding provisions of Statutes 1911 prohibiting transportation of women into state from another state for immoral purposes are controlled by Mann Act of 1910.

Southern Railway Co. v. *Railroad Commission*, 236 U.S. 447; 59 L. Ed. 666; 35 Sup. Ct. 304—

holding Indiana statute requiring railroads to place grab-irons or handholds in sides or ends of cars is superseded by Federal Safety Appliance Act as to cars operated on interstate lines, although engaged only in intrastate commerce.

Loomis v. *Lehigh Valley R. Co.*, 208 N.Y. 330, 331; 101 N.E. 914—

holding under Interstate Commerce Act prohibiting carrier from making charges different from those in filed schedules, and providing for complaint to Commission is suit in Federal Court, state Court has no jurisdiction to recover cost of lumber used to make cars suitable for shipment of grain.

Generally it may be said in respect to laws resting upon the police power of the state that they must yield whenever

Congress, in the exercise of power granted to it by the Constitution, legislates upon the precise subject-matter, for the police power, like all other reserved powers of the states, is subordinate to those powers in terms conferred by the Constitution upon the Nation. *Gulf &c. R. Co.* v. *Hefley*, 158 U.S. 104. *Chicago &c. R. Co.* v. *Hardwick*, 226 U.S. 426. *Michigan Cent. R. Co.* v. *Vreeland*, 227 U.S. 59.

From what source among the delegated powers in the Constitution did Congress derive its authority to pass the United States Standard Time Act?

From a twofold source. That is an answer consistent with the obvious meaning of the words used in the Act. That is to say, in its genesis this Act is both (1) a standard measure of time, *i.e.*, duration, and (2) a regulation of interstate commerce. It may very well be that Congress first established a standard measure of time under the power delegated to it by article I, sec. 8, cl. 5, of the Constitution, and then proceeded under the power delegated to it by the interstate commerce clause (clause 3) to impose its standard measure of time, *i.e.*, duration, already formulated, upon interstate commerce as a regulation thereof. In either alternative every objection which may be urged against a state statute which is incompatible with an Act of Congress is doubly reinforced. The Massachusetts Act avowedly changes, therefore, a standard of time and a regulation or rule by which interstate commerce is to be operated. That Act is consequently invalid for two distinct constitutional reasons, either of which is sufficient to render the Act inoperative and cause it to be declared unconstitutional.

Assuming, but not admitting, that the Act of Congress of March 19, 1918, is solely a regulation of interstate-commerce, and exists only because of that clause of the Federal Constitution, the appellants are not in a much better position with regard to validity of the Daylight Saving Act, be-

cause, in this alternative, the appellants contend that *it is a conflicting and hostile piece of legislation and in its natural and necessary operation obstructs interstate commerce.*

See—

C. & N.W. R.R. Co. v. *Fuller*, 17 Wall. 560; 21 L. Ed. 710—

where it is said (714 L. Ed.):

> "In the complex system of polity which exists in this country the powers of government may be divided into four classes:
>
> "[1] Those which belong exclusively to the states.
>
> "[2] Those which belong exclusively to the national government.
>
> "[3] Those which may be exercised concurrently and independently by both.
>
> "[4] And those which may be exercised by the states, but only until Congress shall see fit to act upon the subject.
>
> "The authority of the state then retires and lies in abeyance until the occasion for its exercise shall recur. *Ex parte McNeil*, 13 Wall. 240, 20 L. ed. 625.
>
> "Commerce is traffic, but it is much more. It embraces also transportation by land and water, and all the *means and appliances necessarily employed in carrying it on*, 2 Story, Const., Sections 1061, 1062.
>
> "The authority to regulate commerce, lodged by the Constitution in Congress, is in part within the last division of the powers of government above mentioned. Some of the rules prescribed in the exercise of that power must, from the nature of things, be uniform throughout the country. *To that extent the authority itself must necessarily be exclusive, as much so as if it had been declared so to be by the constitution in express terms.*"

The appellants contend, and no one disputes it, that a standard regulation of time uniformly applied throughout the country is now necessary to the orderly conduct of interstate commerce. Therefore, according to the last case, the authority exercised by Congress in establishing such a standard time for continental United States by the Act of March 19, 1918, "*must necessarily be exclusive.*" And there are many other authorities of like import. As a consequence the Massachusetts Daylight Saving Act is declared invalid as incompatible with the Act of Congress of March 19, 1918, in its aspect as a time regulation or standard imposed upon interstate commerce, because the Massachusetts Act imposes a conflicting time regulation or standard upon its citizens which introduces into interstate commerce confusion, injects therein constant risks to property and life, and in its necessary operation compels the railroad engineers and firemen, represented in this bill, to live and work under two separate standard local days, thus depriving them of their rights and privileges under the Constitution and the Act of Congress of March 19, 1918, to wit, the right and privilege to live and work under a single time standard or regulation.

The Lower Court Held This Case was Not Free from Reasonable Doubt, and that a Refusal of the Relief Sought will Not be Followed by Irreparable Injury.

We now take up the appellants' XVII, XIX, XX, XXI, and XXII assignments of error, to wit:

> "XVII. The court erred in holding that plaintiffs' bill does not present a case reasonably free from doubt and that a refusal of the relief sought will not be followed by great and irreparable injury."
>
> "XIX. That the court erred in refusing to enjoin the enforcement of the statute passed by the General Court of the Commonwealth of Massachusetts on April 9th, 1920, entitled: 'An Act to Restore to the Citizens

of Massachusetts the Benefits of "Daylight Saving," so called,' which statute is set forth at large in the third paragraph of the bill of complaint, which statute is also set forth in chapter 280 of the Acts and Resolves of Massachusetts for the year 1920, and amended by chapter 145 of said Acts and Resolves for the year 1921, also set forth at large in the third paragraph of the bill of complaint, and which said statute is also set forth without said amendment, in Massachusetts General Laws in the compilation of the General Laws of Massachusetts officially published by the Commonwealth of Massachusetts in the year 1921, as section 10 of chapter four."

"XX. The court erred in not passing an injunctive order against the defendant, Jay R. Benton, as Attorney General of the Commonwealth of Massachusetts."

"XXI. The court erred in not passing an injunctive order against the defendant Payson R. Smith, as Commissioner of Education for the Commonwealth of Massachusetts."

"XXII. The court erred in not passing an injunctive order against the defendant, William S. Youngman, as Treasurer and Receiver General of the Commonwealth of Massachusetts."

The motion to dismiss admits, among many other allegations, that 6500 railroad engineers in passing in and out of Massachusetts daily are each day forced by the Massachusetts Act to live and work by two standards, and that they and their families are, each recurring day, subject to mental strain, vexation, and harassment, which endangers the lives and limbs of the passengers in charge of said enginemen and subjects the freight being transported under their charge to constant and unnecessary risk of destruction; that the Massachusetts Act has already caused death and damage and interferes with the regulation of interstate

commerce made and provided by the Act of Congress of March 19, 1918, and the Massachusetts Act thereby infringes upon the rights, privileges, and immunities of said trainmen and their families as guaranteed by the Constitution of the United States to the citizens thereof (R. 14, 15, 16).

The motion to dismiss admits also that the assets of the second largest industry in the Commonwealth, to wit, farming, have been depreciated by the natural operation and effect of the Massachusetts Act to the extent of more than $20,000,000 in value (R. 8, 9, 10); that the basic industry of agriculture is actually being destroyed to a definite degree by natural operation and effect of the Act (R. 9); that the 200 acres of land belonging to the appellant Charles F. Clark, and suitable for growing onions and tobacco, are being depreciated and the cheaper grades of said land rendered wholly valueless, and that in the production of tobacco and onions the American standard of living is being insidiously destroyed by the operation and effect of the Massachusetts Act; that Charles W. Mann, the interstate-commerce farmer, with an agricultural enterprise, under one management, extending into two states, between which he has frequently to pass, is caused loss of time, mental vexation, and loss of money in his interstate agricultural operations; that his land has been depreciated to the extent of more than $5000 by the operation and effect of said Massachusetts Act which deprives him of his constitutional rights and privileges (R. 11, 12); that the Inhabitants of the Town of Hadley, because they voted to conduct and are now conducting their affairs according to the standard provided by the United States Standard Time Act contrary to the mandates of the Massachusetts Act, are being deprived by three of the defendants of their allotment of state aid for public schools (R. 2, 17, 20, 22, 19).

On the question whether there is an adequate remedy at law see: "*A Federal Equity Suit*," by Simkins (3d ed. 1916):

"First. It is not enough that there be a remedy at law, but it must, in the discretion of the chancellor, be as plain, practical, efficient, and speedy as the remedy in equity, in order to decline jurisdiction in equity. Barber v. Barber, 21 How. 591, 16 L. Ed. 229; Tyler v. Savage, 143 U.S. 95, 26 L. Ed. 88, 12 Sup. Ct. Rep. 340; Payne v. Hook, 7 Wall. 430, 19 L. Ed. 261; Pokegama Sugar Pine Lumber Co. v. Klamath River Lumber & Improv. Co. 96 Fed. 55; Bank of Kentucky v. Stone, 88 Fed. 390; Smith v. American Nat. Bank, 32 C.C.A. 368, 60 U.S. App. 431, 89 Fed. 839; Western Assur. Co. v. Ward, 21 C.C.A. 378, 41 U.S. App. 443, 75 Fed. 342; Brun v. Mann, 12 L.R.A. (N.S.) 154, 80 C.C.A. 513, 151 Fed. 154; Brewster v. Lanyon Zinc Co. 71 C.C.A. 213, 140 Fed. 616.

"Second. That the legal remedy, both in respect of the final relief and the mode of obtaining it, must be as efficient in law as in equity. Ibid; Walla Walla v. Walla Walla Water Co. 172 U.S. 12, 43 L. Ed. 346, 19 Sup. Ct. Rep. 77; Kilbourn v. Sunderland, 130 U.S. 505-515, 32 L. Ed. 1005-1009, 9 Sup. Ct. Rep. 594; Springfield Mill Co. v. Barnard & L. Mfg. Co. 26 C.C.A. 389, 49 U.S. App. 438, 81 Fed. 261; Schmidt v. West, 104 Fed. 272. Thus a bill may be brought for a stock of goods in the hands of a collector of customs, because they cannot be replevied (U. S. Rev. Stat. 934, Comp. Stat. 1913, sec. 1560). Pollard v. Reardon, 13 C.C.A. 171, 21 U.S. App. 639, 65 Fed. 849. See His Imperial Majesty v. Providence Tool Co. 23 Fed. 572.

"Third. A court of equity is not justified in declining jurisdiction unless it appears that the legal remedy is neither obscure or doubtful as to its adequacy or completeness. (Authorities above.) However, inadequacy of the remedy at law means that in its nature and character it is not fitted or adapted to the end in view. Thompson v. Allen County, 115 U.S. 545, 29 L. Ed. 473, 6 Sup. Ct. Rep. 140; Rees v. Watertown, 19

Wall. 124, 125, 22 L. Ed. 77; Buzard v. Houston, 119 U.S. 352, 30 L. Ed. 453, 7 Sup. Ct. Rep. 249; Adams v. Murphy, 91 C.C.A. 272, 165 Fed. 305. Thus, if the suit be for money by way of damages for fraud, a judgment at law is an adequate remedy, even though you may not be able to collect it by the usual process. This latter fact does not make the remedy inadequate within the meaning of section 723, but should the agreement procured by fraud be of a continuing nature, and rescission be necessary for complete relief, in addition to damages sought, then the judgment at law is not adapted to the end in view, and equity will take jurisdiction. Ibid; Alger v. Anderson, 92 Fed. 708; Shields v. McCandlish, 73 Fed. 320; Security Sav. & L. Asso. v. Buchanan, 14 C.C.A. 97, 31 U.S. App. 244, 66 Fed. 801; Walker v. Brown, 58 Fed. 29, 30; Whitney v. Fairbank, 54 Fed. 986; Paton v. Majors, 46 Fed. 211.

"Fourth. The remedy at law to be adequate must be a remedy at law in the Federal Court, where jurisdiction in equity is sought. Coler v. Stanley County, 89 Fed. 257; Smyth v. Ames, 169 U.S. 466, 42 L. Ed. 819, 18 Sup. Ct. Rep. 418; Jones v. Mutual Fidelity Co. 123 Fed. 518; Brun v. Mann, supra; United States L. Ins. Co. v. Cable, 39 C.C.A. 264, 98 Fed. 763, 764; Yonley v. Lavender, 21 Wall. 276, 22 L. Ed. 536; Sheffield Furnace Co. v. Witherow, 149 U.S. 579, 37 L. Ed. 856, 13 Sup. Ct. Rep. 936. It is not enough that there may be a remedy at law in the State courts, Ibid; Brun v. Mann, 12 L.R.A. (N.S.) 154, 85 C.C.A. 513, 151 Fed. 153, 164; United States L. Ins. Co. v. Cable, 39 C.C.A. 264, 98 Fed. 761, Smyth v. Ames, 169 U.S. 517, 42 L. Ed. 838, 18 Sup. Ct. Rep. 418; Schmidt v. West, 104 Fed. 273. A party is not compelled to go into a foreign jurisdiction to avail himself of it (United States L. Ins. Co. v. Cable, supra); especially if by going into such jurisdiction he would be deprived of the right of introducing certain evidence that would be admissible in

equity; or forfeit any right. Ibid.; Mutual L. Ins. Co. v. Pearson, 114 Fed. 397."

In *Cruickshank* v. *Bidwell*, 176 U.S. 73, 81, Fuller, C.J., says:

> "Inadequacy at law exists where the case made demands preventive relief, as, for instance, the prevention of multiplicity of suits, or the prevention of irreparable injury. The one head is well illustrated by Union Pacific Railway Company v. Cheyenne, 113 U.S. 516, and Smyth v. Ames, 169 U.S. 466, 517; and the other by Watson v. Sutherland, 5 Wall. 74."

The last case says that loss of trade, destruction of credit, and failure of business prospects—commercial ruin in short—collateral or consequential damages, which might nevertheless ensue, would not be compensated for at law, but were properly prevented in equity.

In the case at bar the damages are both real and consequential; farms and farm enterprises within the Commonwealth of Massachusetts have been depreciated by a sum in excess of $20,000,000 in value by the operation of the Act. This and the other statements herein are admitted by the motion to dismiss. The appellant Mann, the interstate-commerce farmer who operates an agricultural enterprise extending into two states, has also suffered a depreciation in his property values by virtue of the operation of the Act of an amount exceeding $5000; in fact, the damages are incessantly recurring during the annual period of the operation of the Act and in their nature are of an infinite variety, extending from the actual destruction of values, from actual loss and injury to life and property, to a constant and potential menace to the lives of the appellants who operate the railroad trains daily in and out of said Commonwealth, and to a constant and potential threat of destruction of the property under their care; extending also to those actual and consequential injuries, subtle in

their nature, but nevertheless real, which are included in that phase of this case which seeks to redress the deprivation under color of the Massachusetts Act of the rights, privileges, and immunities secured to the appellant citizens by the Constitution and the Act of Congress of March 19, 1918, providing Standard Time for all persons subject to the jurisdiction of the United States.

In the case of the Inhabitants of the Town of Hadley these damages are more obvious than in many cases brought to redress the deprivation under color of a state Act of the rights, privileges, and immunities secured to citizens by the Constitution.

This is Not a Suit against the State.

The Attorney General says that the bill is in substance a suit against the state.

But it has been held in many cases that the exemption of the state from suability cannot be pleaded by its officers when they are proceeded against for executing or threatening to execute an unconstitutional Act of the state. See *Pennoyer* v. *McConnaughy*, 140 U.S. 1; 35 L. Ed. 363, which is a case which clearly recognizes that principle.

It is the Duty of the Attorney General to Enforce the Massachusetts Act.

Of course, if the Court finds as a matter of law that the Attorney General has no duty to enforce the Massachusetts Daylight Saving Act, that the Act is unenforcible by any means and does not in any way affect the public interest or welfare, the Attorney General could not be enjoined from enforcing the Act, although he be admittedly eager to do so.

The Massachusetts Act is entitled: "An Act to Restore to the citizens of Massachusetts the Benefits of 'Daylight Saving', so called."

Then follows the emergency preamble, which reads:

"Whereas, it is desirable that the benefits of this act should be enjoyed during the present year, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience."

We now know, upon close inspection of the Act, what the Attorney General has always known:

(1) That it is an emergency Act.

(2) That it is an Act necessary for the immediate preservation of the public health.

(3) That it is an Act necessary for the immediate preservation of the public convenience.

(4) That it is an Act to restore to the citizens of the Commonwealth benefits which they must necessarily have previously lost.

(5) That it is an Act which provides what the standard time in this Commonwealth "shall be."

(6) That the Act provides the standard to govern the time of the performance of all acts of officers and departments of the Commonwealth, counties, cities, towns, and districts thereof, the standard time of banks, including national banks which are chartered by and "subject to the jurisdiction of the United States," by providing the standard time by which all rights shall accrue or determine, and the standard time to be used in public schools, etc., and the standard time applicable to all contracts and choses in action.

The Act provides no penalty; but it uses language as mandatory as the commandment "Thou shalt not kill" when it says the time in this Commonwealth "shall be United States Standard Eastern Time as changed by this Act." It is a positive establishment by the legislative will of a standard mandatory upon towns and their officials and schools of towns, and mandatory as a standard of computing time upon all persons "subject to the jurisdiction of the Commonwealth."

The Attorney General is by law charged with definite duties in this Commonwealth: He "*shall take cognizance of all violations of the law affecting the general welfare of the people*" (Appendix).

Now the Attorney General for the purpose of this case admits he knows that the Town of Hadley has voted to conduct and is now conducting its business and running its schools upon United States Standard Eastern Time. Yet he argues that he is helpless, although he threatens and desires to move, when (1) an emergency law; (2) a law "necessary for the immediate preservation of the public health;" (3) "a law necessary for the immediate preservation of the public convenience;" (4) a law changing an Act of Congress; (5) a law providing a standard of time for towns and the schools of towns; (6) a law providing what the standard of time in this Commonwealth "shall be"; (7) and a law restoring benefits to all the citizens is being flagrantly and openly broken and publicly disdained by the Town of Hadley and the schools of Hadley.

Furthermore, a mandatory duty is placed upon the Attorney General by the words: He (the Attorney General) "shall take cognizance of all violations of law affecting the general welfare of the people." As a public officer he is sworn to uphold the laws of Massachusetts (Appendix).

In this connection the word "cognizance" is "*a word of the greatest import, signifying full power, authority and jurisdiction*" (see *Commonwealth* v. *Webster*, 59 Mass. (6 Cush.) 386, 400); he can take any legal action to prevent the destruction of the integrity of the Massachusetts Standard Time Act provided by law. He faces a situation where an emergency law, alleged to have been passed for the sake of the public health and convenience, restoring benefits to all the citizens, establishing a standard of official time, is being insidiously destroyed. Surely the fire chief may not lie by while the house is being destroyed by fire simply because it is a new kind of house and does not carry printed directions attached to its gables directing him just

what to do. Assuming, as the Attorney General must assume, that the preservation of this Act is a matter of great public concern, What can he do about it? What is he in duty bound to do about it?

The answer is plain: Bring an information in equity against the offending officials of the recalcitrant town or school and restrain them from defying the mandates of the Great and General Court of Massachusetts contained in its emergency law, necessary for the immediate protection of the public health and convenience, and passed to restore great benefits to the citizenry of the Commonwealth. All these matters of great public concern are being jeopardized obviously by the open defiance of a large community, and the duty of the Attorney General as matter of law is plain.

Nor does he lack potent precedent in the law for such action.

> See *Attorney General* v. *Henry B. Williams et al.*, 174 Mass. 476:
>
> This was "an information by the Attorney General to prevent the erection and maintenance of that portion of a building on Copley Square in the city of Boston which is above the limit of height prescribed by St. 1898, c. 452. Section 1 of this statute is as follows: 'Any building . . . may be completed, built, rebuilt, or altered to the height of ninety feet and no more; . . .' On the case as now presented we must assume that Copley Square, in the language of the information, '"is an open square and a public park intended for the use, benefit, and health of the public,"' . . .
>
> "It is contended by the defendants that the Attorney General cannot maintain a suit in equity to enforce this statute. His right depends upon the construction put upon the statute. We hold that the statute gives rights in the nature of an easement over lands facing Copley Square, which easement is annexed to the Square for the benefit of the public, for whose use and

enjoyment Copley Square was laid out; and that these rights are similar in their nature to rights in highways, in great ponds, and in the navigable waters of the Commonwealth. For a deprivation of such public rights, an individual, unless he has suffered damages different in kind from those to the public generally, cannot maintain an action. The Attorney General, as a public officer, represents the public, and may bring all proper suits to protect their rights. The wrong alleged in the present case, if permitted, would work a permanent injury to the public—depriving them of that which the statute gives them. It is a purpresture which, while not in a strict and narrow sense a public nuisance, is in the nature of a public nuisance, is sometimes called a public nuisance, and in equity is to be dealt with as a public nuisance. Commonwealth v. Wilkinson, 16 Pick. 175. Attorney General v. Boston Wharf Co., 12 Gray, 553. Attorney General v. Woods, 108 Mass. 436. Jenks vs. Williams, 115 Mass., 217. Attorney General v. Old Colony Railroad, 160 Mass. 62. People v. Vanderbilt, 26 N. Y. 287. In regard to the enforcement of rights given to the public and to other land owners in lands reserved for their use by the Commonwealth, see Attorney General v. Gardiner, 117 Mass. 492, 499; Attorney General v. Williams, 140 Mass., 329, 330, 331; Attorney General v. Algonquin Club, 153 Mass., 447, 454. In England it is held that "'the Attorney General has a right to represent the public, either in equity or by prosecution at law, in cases where the public interests are exposed to danger or mischief.'" Attorney General v. Birmingham & Oxford Junction Railway, 3 Macn. & G. 453. Attorney General v. Mid-Kent Railway, L. R. 3 Ch. 100. Attorney General v. Shrewsbury Bridge Co. 21 Ch. D. 752. Attorney General v. Cockermouth Local Board, L. N. 18 Eq. 172. In Attorney General v. Jamaica Pond Aqueduct, 133 Mass. 361, 364, it was said in

reference to a great pond that, where an aqueduct corporation proceeds to draw off water to such an extent "'as to injure or endanger the rights of the public therein, an information in equity would furnish the only adequate means of asserting and protecting the rights of the government and of the public.'" The case of Attorney General v. Abbott, 154 Mass., 323, under facts similar to those of the present case, sustains the right of the Attorney General to maintain an information in equity for the protection of public rights in land dedicated to the use of the public as a park. Of similar purport is Attorney General v. Tarr, 148 Mass. 309, 314. His right in Attorney General v. Revere Copper Co., 152 Mass., 444, a similar case, was assumed. See also Attorney General v. Metropolitan Railroad, 125 Mass. 515; Attorney General v. Consumers' Gas Co., 142 Mass. 417. We are of opinion that the Attorney General is the proper party, and that an information in equity is the proper form of proceeding for the enforcement of public rights against encroachments like those threatened in the present case.

"There remains to be considered one other objection to the right of the Attorney General to maintain this suit. It is argued that by St. 1894, c. 257, the city of Boston is given the right to enforce its building laws, that this remedy excludes all others, and that it applied to violations of the St. of 1898, c. 452. It is true that when a statute provides a remedy for violation of it, the remedy is generally exclusive; but if it provides no remedy, relief from wrongs against it is to be sought at common law. Andover Turnpike v. Gould, 6 Mass. 40, 44. Wiley v. Yale, 1 Met. 553. Elder v. Bemis, 2 Met. 599, 604. United States v. Laeseki, 29 Fed. Rep. 699, and cases cited. St. 1894, c. 257, is as follows: '"The supreme judicial court, or any justice thereof, and the superior court, or any justice thereof, in term time or vacation, shall, on the

application of the city of Boston by its attorney, have jurisdiction in equity to enforce or prevent the violation of the provisions of the acts relating to the erection or alteration of buildings or other structures in the city of Boston, and may, on such application, restrain the erection, alteration, use, or occupation of any such building, or structure which is being, or has been erected or altered in violation of any of the provisions of said acts.'' ' It was passed in reference to the elaborate statutes then in force enacted under the police power of the Legislature for the regulation of the erection of buildings in the city of Boston. When it was passed, no such statute as that invoked by the Attorney General was contemplated. Whether the words ' ''acts relating to the erection or alteration of buildings or other structures in the city of Boston'' ' were intended to include any new and independent acts of a kindred character that might afterwards be passed, as distinguished from existing acts and amendments of them, may well be questioned. The natural construction of the words would make them apply only to conditions then existing. The statute under which this information is brought, as we construe it, materially differs from the acts relative to the erection of buildings in the city of Boston, existing when the previous statute was passed. . . . The statute does not provide a remedy for its enforcement, and therefore the remedies must be sought at common law. The kind of remedy provided by the statute in regard to the building laws gives no security to the public for the protection of their rights, . . .''

This Act provided no penalty and did not impose in terms any obligation of enforcement.

In *Attorney General* v. *Methuen*, 236 Mass. 564, Rugg, C. J., said (p. 680):

''The permission of such argument [made by coun-

sel who was not connected with the Attorney General's office] must not be taken as a precedent. The granting of a city charter is an attribute of sovereign power. It cannot be assailed in this form of proceeding by one who has only the standing of private citizen. An information of this nature must be prosecuted by and in behalf of the Commonwealth and by or under the immediate supervision of the Attorney General and in that way alone. Attorney General v. Adoina Shomo Corp. 167 Mass. 424. Haupt v. Rogers, 170 Mass. 71 N. L. c. 192, secs. 6-13. See McGlue v. County Commissioners, 225 Mass. 59."

The Court rejected the name of the relator as surplusage and said: "The case is treated on that footing." But the Court found the statute which was attacked unconstitutional, and state (p. 582): "Whatever legal consequences may flow from the fact that the city charter of Meuthen is an unconstitutional statute must be met as and when they arise."

See *Attorney General* v. *Apportionment Commissioners*, 224 Mass. 599, 610, where it is said:

> "Where the public interests are involved, the Attorney General may institute a petition for mandamus to vindicate the public right."

(N.Y. 1872.) Where a public right is invaded and no other remedy exists at common law, the Attorney General may sue in his representative capacity, whether the injury affect the whole people or a limited organization of them.

People v. *Tweed*, 13 Abb. Prov. (N.S.) 25.

While there is no specified Federal statute empowering the Attorney General of the United States to bring actions and suits in the name of the United States, yet the power

resides in him as the head of the Department of Justice to do so.

Cohen v. *United States*, 38 App. D.C. 123.

Cognizance.

Webster v. *Commonwealth*, 59 Mass. (5 Cush.) 386, 400:

"is a word of the greatest import, embracing all power, authority and jurisdiction."

"Having immediate cognizance" is used in the sense of "the right to take notice of and determine a cause."

Clarion County v. *Western Hosp. for Insane*, 3 Atl. 97, 98; 111 Pa. 339.

Both the Act of Congress of March 19, 1918, and the Massachusetts Act are Mandatory.

This is so for two reasons:

(1) Both Acts are passed in the interest of the public generally.

(2) Both Acts are in the imperative form, as denoted by the constant use of the word "shall."

When a statute authorizes the doing of a thing for the sake of the public good, the words "may" or the phrase "it shall be lawful" means "shall."

"So long ago as the year 1693 it was decided in the case of The King v. Barlow, that when a statute authorizes the doing a thing for the sake of justice or the public good, the word 'may' means 'shall'; and that rule has been acted upon to the present time. In Bacon's Abridgment, to the Statute (1), the rule is so laid down, as also in Dwarris on Statutes, p. 264. Speaking of facultative words, it is there stated that where a statute directs the doing of the thing 'for the sake of justice' or 'for the public benefit' the word

'may' shall be construed as 'shall' or 'must,' and of course the same rule will apply to the words 'it shall be lawful.' "

Reg. v. *Bishop of Oxford* (1879), 4 Q.B.D. 245, at pp. 258, 259; 4 L.J. Q.B. 609, at p. 619; Cockburn, C.J., delivering the judgment of the Court.

"When a statute declares that something 'shall' be done, the language is considered imperative and the thing must be done; where the word 'may' is used, the language is as a general rule permissive. No doubt in many cases the phrase 'shall and may be lawful' has been construed as imperative by the Courts, having regard to the object of that provision and to the context and the rule above mentioned, and it seems they have so construed the word 'may' standing alone as in Reg. v. Barclay."

Davies v. *Evans* (1882), 9 Q.B.D. 238, at pp. 242, 243; 51 L.J. M.C. 132, at p. 136; Grove, J.

The Act of Congress of March 19, 1918, Provides a Standard Time for General Purposes, and the Lower Court Misinterpreted the Act.

The turning point in the District Court's decision is contained in the following paragraphs taken from the Court's opinion, wherein it narrows and restricts the Act of Congress of March 19, 1918, to the movement of common carriers engaged in interstate and foreign commerce, and to Federal activities:

"The plaintiffs' fundamental contention is that section 2 of the Federal Act makes Standard time the general measure of time for all persons subject to the jurisdiction of the United States; that therefore the provision of the Massachusetts Daylight Saving Act

for a different standard of time during several months of the year is unconstitutional.

"They urge that in providing a standard time for the United States, Congress acted under Article I, section 8, paragraph 5, of the Constitution, which says that,—'The Congress shall have power to fix the standard of weights and measures'; and also that such power is soundly grounded upon the commerce clause. Compare Standard Time Zone Investigation case, 51 I.C.C. 273.

"An answer to this contention is that assuming that Congress has constitutional power under the standard-of-measures clause, or the commerce clause, or under both clauses, to provide a standard time applicable to all persons subject to the jurisdiction of the United States, it has not yet seen fit to go further than to make such standard time applicable only: (1) to the movement of common carriers engaged in interstate and foreign commerce; (2) to its own officials and departments; and (3) to all acts done by any persons under Federal statutes, orders, rules and regulations. So construed,—the Federal Standard Time Act is not exclusive of State action on the same subject-matter; there is no conflict between the two Acts; the power of the States in regard to measuring time is the same as over insolvency when there is no Federal bankruptcy law. See Sturges v. Crowninshield, 4 Wheat. 122, 193; Ogden v. Saunders, 12 Wheat. 213. Compare Commonwealth v. Nicholson, 236 Mass. 292, 293, and cases cited."

The Court erred in the above interpretation as pointed out in appellants' assignments of error Nos. V and I, to wit:

"V. That the court erred in refusing to hold that the Act of Congress of March 19, 1918, entitled: 'An Act to Save Daylight and to provide Standard Time

for the United States', as amended by the Act of Congress of August 20, 1919, (c. 51, 41 St. L. 280) entitled: 'An Act for the Repeal of the Daylight Saving Law,' as amended by the Act of Congress of March 4, 1921, 41 St. L. 1446) entitled: 'An Act to Transfer the Panhandle and Plains sections of Texas and Oklahoma to the United States Central Time Zone,' and as amended by the Act of March 3, 1923, (c. 216 42 St. L. 1434) entitled: 'An Act to Amend an Act entitled: "An Act to Save Daylight and To Provide Standard Time for the United States",' does provide a standard for the measurement of time for general purposes applicable to all persons subject to the jurisdiction of the United States."

"I. That the court erred in holding that by the Act of Congress of March 19, 1918, entitled: 'An Act to Save daylight and to provide Standard Time for the United States,' as amended, Congress 'has not yet seen fit to go further than to make such standard time applicable only: (1) to the movement of common carriers engaged in interstate and foreign commerce; (2) to its own officials and departments; and (3) to all acts done by any persons under Federal statutes, orders, rules and regulations, 'in that by such limited construction of said statute, as amended, the court has applied the rule: *Expressio unius exclusio alterius*, to the manifest destruction and defeat of the Congressional "*purpose of establishing the standard time of the United States.*"

Applying the following rules of interpretation, it is clear that the Court erred in restricting this statute and not leaving it a general-purpose Act.

"General words in a statute must receive a general construction, unless you can find in the statute some ground for limiting and restraining their meaning by

reasonable construction, and not by arbitrary addition or retrenchment."

Beckford v. *Wade* (1805), 17 Ves. 87, at 91; Grant, M.R.

"A great many things are put into a statute *ex abundanti cautela*, and it is not to be assumed that anybody not specifically included is for that reason alone excluded from the protection of the statute.—McLaughlin v. Westgarth (1906), 75 L.J. P.C. 117, at 118. Lord Salisbury delivered the opinion of the Judicial Committee.

"Acts of Parliament are, in my experience, expressed with such accuracy and precision as to justify the Court in striking out unambiguous words in order to make a sentence grammatical or logical. The generality of the maxim '*expressum facit cessare tacitum*,' which is relied on renders caution necessary in its application. It is not enough that the express and the tacit are merely incongruous; it must be clear that they cannot reasonably be intended to co-exist. In Colquhoun v. Brooks, Wills, J., says: 'I may observe that the method of construction summarised in the maxim "*expressio unius exclusio alterius*" is one that certainly requires to be watched . . . The failure to make the '*expressio*" complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind.' Lopes, L.J., in the Court of Appeal, says: 'The maxim "*expressio unius, exclusio alterius*" has been pressed upon us. I agree with what is said in the Court below by Wills, J., about the maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The *exclusio* is often the result of inadvertence or accident, and the maxim ought never to be applied when its

application, having regard to the subject matter to which it is applied, leads to inconsistency or injustice.' ''

Lowe v. *Dorling & Son*, [1906] 2 K.B. 772, at pp. 784, 785; 75 L.J. K.B. 1019, at p. 1026; Farwell, L.J.

In reaching a correct construction of this Act of Congress of March 19, 1918, the rule of interpretation must be kept in mind which excludes the Government and its activities from the general operation of a legislative Act, unless it is expressly included or unless it otherwise appears that the Government itself was in the contemplation of the Legislature when passing the Act. Having in mind that the common carriers of the United States were under Government control and therefore a part of the Government's activities at the time of the passage of the Standard Time Act, it is urged that the carriers and the Government are mentioned in the Act, not for the purpose of limiting its generality as held by the District Court, but for the purpose of providing against an interpretation of the Act which would exclude both unless specifically mentioned. This same course was pursued by Congress in the original Act establishing the decimal system (Appendix). The manner of account therein established for the United States was plainly for general purposes, but this Act of Congress contained at its end a striking example of the point under discussion in words as follows: "*and all accounts in the public offices and all proceedings in the Courts of the United States shall be kept and had in conformity to this regulation.*" The appellants contend that in each of these laws the Government was specifically included, not in order to narrow and qualify the Act, but for the special purpose of making sure that the Government and its activities were included within its terms. Otherwise the Courts might exclude the Government from the operation of these laws.

From ancient times this rule of interpretation has existed. In 1821 Judge Story, not as a prerogative of Government, but as a rule for the construction of statutes, stated it in language which needs no restatement.

United States v. *Hoar* (1821), 2 Mason, 311, 314; 26 Fed. Cas. No. 15,373, 329, 330:

> "But independently of any doctrine founded on the notion of prerogative, the same construction of statutes of this sort ought to prevail, founded upon the legislative intention. Where the government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischiefs to be redressed, or the language used, that the government itself was in contemplation of the legislature, before a court of law would be authorized to put such an interpretation upon any statute. In general, acts of the legislature are meant to regulate and direct the acts and rights of citizens; and in most cases the reasoning applicable to them applies with very different, and often contrary force to the government itself. It appears to me, therefore, to be a safe rule founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless the construction be clear and indisputable upon the text of the act."

Thus, in *United States* v. *Fisher*, 2 Cranch, 358; 2 U.S. (L. Ed.) 304, the United States was held entitled to priority of payment out of the insolvent estate of any debtor, although the statute provided for priority "where any revenue officer or other person hereafter becoming indebted to the United States by bond or otherwise shall become insolvent," and counsel argued that the natural mode of expressing an intent to include all debtors would have been "any person indebted to the United States."

Justice Clifford, in *United States* v. *Herron*, 20 Wall. 255;

22 U.S. (L. Ed.) 275, traces the origin of this rule of statutory construction, where the opinion continues as follows:

> "Acts of Parliament, says Chitty on Prerogative, 383, which would divest or abridge the king of his prerogatives, his interest, or his remedies, in the slightest degree, do not in general extend to or bind the king, unless there be express words to that effect. Therefore, says the same learned author, the statutes of limitation, bankruptcy, insolvency, set-off, etc., are irrevelant in the case of the king, nor does the statute of frauds relate to him, which last proposition is doubted by high authority. Exceptions exist to that rule undoubtedly, as where the statute is passed for the general advancement of learning, morality, and justice, or to prevent fraud, injury, and wrong, or where an act of Parliament gives a new estate or right to the king, as in that case it will bind him as to the manner of enjoying or using the estate or right as well as the subject."

Applying the rule defined so well by Judge Story, the District Court clearly erred in its limited construction of the United States Standard Time Act. Under the application of that rule of construction, that Act must be held to have been a general-purpose Act.

Turning our attention now to another aspect presented by the alleged erroneous construction of the Act of March 19, 1918, the appellants' assignments of error contained the following, to wit:

> "II. That the court erred in failing to hold that Congress has set up and provided a Congressional exposition and interpretation of its 'purpose of establishing the standard time of the United States' for general use in the Act of March 19, 1918, by the passage of the Act of March 4, 1921, entitled: 'An Act to Trans-

fer the Panhandle and Plains section of Texas and Oklahoma to the United States Central Time Zone' (41 St. L. 1446), and by the passage of the Act of March 3, 1923, entitled: 'An Act to Amend an Act entitled: "An Act to Save Daylight and to provide Standard Time for the United States," as amended,' in that these two acts were passed to relieve the distress of the people caused by the operation of the time standard in the areas affected by transferring large sections of three states from one United States standard time zone to another, and for no other purpose."

Legislative Expositions.

"Reading the two statutes together, I am of the opinion that the legislature has afforded an exposition of the sense and meaning in which the expression 'urban district' is used in the earlier Act."

See *Battersby* v. *Kirk; Morgan* v. *London General Omnibus Co.*, [1904] 1 Ch. 829, at p. 836.
Kirkdale Burial Board v. *Liverpool Corporation*, 73 L.J. Ch. 529, at p. 533; Swinfen Eady, J.

"It is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament or other document."

Courtauld v. *Legh* (1869), L.R. 4 Exch. 126, at p. 130; 38 L.J. at p. 49; Cleasby, B.

This assignment of error is sustained by the contents of the Committee reports that went in with these bills (Appendix), and by the resolutions of the Legislature of the State of Texas (Appendix). Both the Panhandle and Idaho Acts were passed by Congress after the Interstate Commerce Commission, which is authorized by the Act of March 19, 1918, to define the limits between the several zones, had refused to grant the relief sought by communi-

ties affected, on the ground that said Committee did not have jurisdiction to deal with a case. Their language is illuminating and supports the appellants' contention that both the Panhandle and Idaho Acts were Acts of Congress applying the standard time established by the act of March 19, 1918, to communities for general purposes. Congress thus furnishes us in these Acts an interpretation or exposition of its intention in the Act of March 19, 1918, to erect and establish a standard for general purposes.

The language of the Interstate Commerce Commission in refusing to take jurisdiction in the Idaho case, 59 I.C.C. 252, in part follows:

> "From a review of the evidence it clearly appears that to a considerable extent the present petition finds support in a desire for a time faster than mean solar time. Congress has, however, provided the basis for standard time in the several zones, and plainly evinced the intention that the mean solar time of the nearest time-governing meridian should govern at any particular locality so far as the same is practicable, having regard for the convenience of commerce and the existing junction and division points of interstate common carriers. Substantially the same question here presented was before us on the petition for rehearing filed by the Panhandle-Plains Chamber of Commerce of Amarillo, Tex., in which we were asked to move the dividing line between the standard Central and Mountain time zones west so as to include within the Central zone the panhandle sections of Texas and Oklahoma. In our supplemental report, 57 I.C.C., 455, we said:
>
> "We do not conceive it to be within our discretion to adjust the zone boundaries with the avowed purpose of providing a community with a fast or slow time, particularly as the intent of Congress has been unmistakably evidenced by the repeal of the daylight savings or advanced-time section of the act. To change the

limits of a time zone to effectuate such purpose would result in seriously distorting the several zone boundaries which should coincide as nearly as is reasonably practicable with the respective median meridians, having regard for the convenience of commerce and the existing junction and division points of interstate common carriers."

The appellants point with emphasis to the words: "*particularly as the intent of Congress has been unmistakably evidenced by the repeal of the daylight-saving or advanced-time section of the Act.*"

The appellants' III assignment of error is the same in principle as the last, and is therefore properly argued here. It is as follows, to wit:

"III. That the court erred in failing to hold that the General Court of the Commonwealth of Massachusetts in passing Chapter 280 of the Acts and Resolves of 1920, as Amended, and set forth at large in paragraph three of the bill of complaint, and entitled: 'An Act to Restore to the Citizens of Massachusetts the Benefits of the "Daylight Saving," so called,' has set up and provided a legislative exposition and interpretation of the Act of Congress of March 19, 1918, as an act of general application to all persons, in that said chapter 280 purports 'to restore to the citizens of Massachusetts the benefits of "daylight saving," so called,' which said 'citizens' had previously enjoyed solely by virtue of the general application for all purposes and to all persons 'subject to the jurisdiction of the United States' of United States Standard Time as provided by the Act of Congress of March 19, 1918 entitled: 'An Act to save Daylight and to provide standard time for the United States,' and in that said chapter 280 is a substantial reenactment of section three of the Congressional act."

An inspection of the Massachusetts Act will show that it recognizes the Act of Congress of March 19, 1918, as an Act of general application to all persons.

Less than a year before the passage of the Massachusetts Act its Legislature petitioned Congress not to repeal the daylight-saving or advanced-time feature of the Federal Standard Time Act (Appendix).

These two points sustain appellants' assignment of error under discussion.

Congress has Repealed a Portion of Section 2.

Appellants assigned as error failure of the District Court to rule that Congress had repealed that part of section 2 of the Act of March 19, 1918, relating to interstate carriers, which assignment of error is as follows, to wit:

> "IV. That the Court erred in failing to hold that the words in the Act of Congress of March 19, 1918, upon which the court relies in limiting the application of United States Standard Time to carriers, have been repealed, to wit, the words: 'That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between the several states or between a State and any of the Territories of the United States or between a State or the Territory of Alaska and any of the insular possessions of the United States or any foreign country,' in that said provision so far as it provides that the standard time of the zone shall within the respective zones govern the movement of all common carriers was repealed by the Act of Congress of March 4, 1921, entitled: 'An Act to Transfer the Panhandle and Plains section of Texas and Oklahoma to the United States Central Time Zone' (41 St. L. 1446), wherein it is provided that the standard time of two zones may be used by carriers while operating within one zone, and wherein it is pro-

vided: 'That all laws and parts of laws in conflict herewith are hereby repealed.' "

The first words of the 2d section of the act of March 19, 1918, are as follows:

> "That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers . . ."

The Panhandle Act is set out in full in the Appendix, and after providing that the carriers operating in the area affected by the act may use the time of two zones in one zone, the Act in its last section enacts:

> "That all laws and parts of laws in conflict herewith are hereby repealed."

While the Panhandle Act is, geographically speaking, a special Act, the only conflicting part of an Act which could be operated on by this repealing clause appears to be that part of the Act of March 19, 1918, which provides that the standard time of the zone shall govern the movement of all common carriers within the respective zones. Apparently Congress by this repeal depends upon the general-purpose quality of the Standard Time Act to govern the carriers. It now applies to the carriers the same as to the public in general.

See—

Hess v. *Reynolds*, 113 U.S. 79; 5 Sup. Ct. 377; 28 L. Ed. 927—

where Justice Miller said:

> "The usual formula of
>
> "A repealing clause intended to be universal is that all acts on that subject, or all acts coming within its purview, are repealed, or the acts intended to be repealed are named or specifically referred to."

See also—

Whelan v. *New York &c. R. Co.*, 35 Fed. Rep. 853.

"A clear repealing clause expressly repealing all inconsistent provisions of previous statutes . . . may intensify or emphasize that intention, but it is not required to give force and effect."

Per Chief Justice Richardson in *Fisher's Case*, 15 Ct. Cl. 328.

Conclusion.

Appellants submit that their assignments of error have been sustained, and that they are entitled to the relief sought in their bill of complaint. They urge that at least they have established the invalidity of the Massachusetts Act under the principles of *Oregon-Washington R. & Nav. Co.* v. *State of Washington* (will appear in U.S. Reports, vol. 270; Supreme Court Reporter (Apr. 1, 1926), vol. 46, No. 11, p. 279).

The Federal Standard Time Act is a plan national-wide in its scope, and no other than a nationally inclusive plan could be successfully applied to the solution of the problem of time mensuration. This gives the National Government exclusive control of the problem even in the absence of congressional action.

The appellants contend further that these Standard Time Acts of Congress are an exercise by Congress of the power granted to it by the several states under section 8 of article I of the Constitution, which delegated to Congress the power to fix the standard of measures, as well as under the commerce clause. In other words, that duration is measured by time and that a standard time is a standard for the measurement of duration. Congress, having established "the standard time of the United States," has, the appellants contend, thereby occupied the entire field of standard-time legislation.

The Massachusetts Act, we urge, seeks adroitly to annul an Act of Congress, and a consideration of the principle involved brings to mind another period in American history when President Jackson said in a proclamation:

> "I consider, then, the power to annul a law of the United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle upon which it was founded, and destructive of the great object for which it was formed."

Respectfully submitted,

FRANK W. MORRISON,

Solicitor for Appellants.

FOREWORD TO APPENDIX.

The United States Standard Time Act is viewed by the appellants not solely as a regulation of interstate commerce, but as an important and logical step in the great movement which has for its object *uniformity* of standards of weights and measures, a subject which from the inception of this republic has received the attention of Congress and of our leading statesmen. This Act of Congress standardizing time is a continuation, appellants conceive, of that persistent effort for uniformity of standards which has characterized the legislation of the leading nations of the world for centuries before this republic was founded. To furnish the Court with what is believed to be a sound basis for this conception there has been incorporated in this appendix, besides the statutes and committee reports which are directly connected with the questions raised by the case, other historical, scientific, and legislative material, some of which is not easily accessible. This material is believed to provide the investigator and the jurist with the historical background of the United States Standard Time Act and the surrounding atmosphere of its origin.

Particular attention is directed to the extracts from the monumental report made to Congress, at its request, on Weights and Measures by John Quincy Adams, in 1821, when he was Secretary of State, wherein he covers the mensuration of time, and also to the extracts from Sir Sandford Fleming's proposals as to the scientific standardization of time reckonings and measurement, which are now the foundations upon which Congress has erected the United States Standard Time Act, and also the foundations upon which the General Court of the Commonwealth of Massachusetts has erected its Standard Time Act, which appellants allege conflicts with the standard time established by Congress.

Respectfully submitted,

FRANK W. MORRISON,

Solicitor for Appellants.

INDEX TO APPENDIX.

	Page.
1. Act of Congress of March 19, 1918	1
2. Committee Report accompanying above Act	2
3. Act of Congress of August 20, 1919	30
4. Committee Report accompanying above Act	30
5. Panhandle Act	43
6. Committee Report accompanying the Panhandle Act	44
7. Texas Resolution	46
8. The Idaho Act	47
9. Committee Report accompanying Idaho Act	48
10. Massachusetts Standard Time Act, and amendment	50, 52
11. From the Journal of the Massachusetts House of Representatives of May 29, 1919	53
12. From two messages of the first President	54
13. From Report of Thomas Jefferson, on plan for establishing uniformity of weights and measures	54
14. Article IX, ¶4, of the Articles of Confederation and Perpetual Union between the states	55
15. From a communication of the Minister of the French Republic to the Secretary of State, August 2, 1794	56
16. John Quincy Adams Report to Congress	57
17. Act of April 2, 1792	72
18. From Historical Writings of John Fiske	72
19. Joint Resolution of June 14, 1836	73
20. Report accompanying above Resolution	74
21. Act of Congress of July 7, 1838	77
22. Act of Congress of July 28, 1866, authorizing use of metric system	77
23. Joint Resolution of July 27, 1866	77
24. Acts of the several states recognizing supremacy of Federal standards	78
25. Extracts from Sir Sandford Fleming's proposals for time reckoning and scientific measurement, now the basis of all Standard Time legislation	92

Page.

26. Act of Congress of August 3, 1882, the first step in the adoption of a Standard Time for the United States 96
27. Act of Congress of July 7, 1884, appropriating $5000 for the expenses of the International Time Conference 97
28. Act of Congress of March 13, 1884, establishing Standard Time for the District of Columbia on the basic principles enunciated by Sir Sandford Fleming 98
29. From President Arthur's message of December 1, 1884 98
30. From the proclamation of President Wilson, December 26, 1917, taking control of the main transportation systems of the United States 99
31. Pertaining to the duties of the Commissioner of Education and the Treasurer of the Commonwealth of Massachusetts 99
32. Pertaining to the duties of the Secretary of State of the Commonwealth of Massachusetts 100
33. Pertaining to the duties of the Attorney General of the Commonwealth of Massachusetts 103
34. Official oath of office in Massachusetts 104
35. Act of Congress of July 12, 1894, establishing the units of electrical measure 105

ACT OF MARCH 19, 1918.

An Act To Save daylight and provide standard time for the United States.

40 St. L. c. 24, p. 450.

Sec. 1. That, for the purpose of establishing the standard time of the United States, the territory of continental United States shall be divided into five zones in the manner hereinafter provided. The standard time of the first zone shall be based on the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich; that of the second zone on the ninetieth degree; that of the third zone on the one hundred and fifth degree; that of the fourth zone on the one hundred and twentieth degree; and that of the fifth zone, which shall include only Alaska, on the one hundred and fiftieth degree. That the limits of each zone shall be defined by an order of the Interstate Commerce Commission, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in commerce between the several States and with foreign nations, and such order may be modified from time to time.

Sec. 2. That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between the several states or between a state and any of the territories of the United States, or between a State or the Territory of Alaska and any of the insular possessions of the United States or any foreign country. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the

time shall be the United States standard time of the zone within which the act is to be performed.

SEC. 3. That at two o'clock antemeridian of the last Sunday in March of each year the standard time of each zone shall be advanced one hour, and at two o'clock antemeridian of the last Sunday in October in each year the standard time of each zone shall, by the retarding of one hour, be returned to the mean astronomical time of the degree of longitude governing each zone, respectively.

SEC. 4. That the standard time of the first zone shall be known and designated as United States Standard Eastern Time; that of the second zone shall be known and designated as United States Standard Central Time; that of the third zone shall be known and designated as United States Standard Mountain Time; that of the fourth zone shall be known and designated as United States Standard Pacific Time; and that of the fifth zone shall be known and designated as United States Standard Alaska Time.

SEC. 5. That all Acts and part of Acts in conflict herewith are hereby repealed.

65th Congress, 2d Session. } HOUSE OF REPRESENTATIVES. { Report No. 293.

DAYLIGHT SAVING

February 9, 1918.—Referred to the House Calendar and ordered to be printed.

Mr. Sims, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany S. 1854.]

The Committee on Interstate and Foreign Commerce, to whom was referred S. 1854, to save daylight and to provide

standard time for the United States, having considered the same, report thereon with amendments, and as so amended recommend that it pass.

. . . . . .

The following is the report of the Senate Committee on Commerce on this bill:

[Senate Report No. 46, Sixty-fifth Congress, first session.]

Agitation in favor of what has come to be known quite generally as "daylight saving" is widespread throughout the United States. The measure is designed to standardize time for the United States and to advance the standard time one hour during a period of five months every year, beginning at 2 o'clock antemeridian of the last Sunday in April and terminating at 2 o'clock antemeridian of the last Sunday in September. Advocates of the legislation urge its passage upon the following general grounds:

First. It is fairly calculated to accomplish valuable economies in our national life;

Second. The comfort and convenience of many millions of our people will be promoted by its passage; and

Third. It is regarded as of special value in the present national emergency.

With reference to this matter President Wilson wrote the following letter:

THE WHITE HOUSE,
Washington, January 30, 1917.

My dear Mr. Marks: I would have been glad to back up any movement which has the objects of the daylight-saving movement.

In haste,

Cordially and sincerely, yours,

WOODROW WILSON.

HON. MARCUS M. MARKS,
Chairman New York Daylight Saving Committee, New York City.

Mr. Marks, who is president of the Borough of Manhattan, of the City of New York, and also president of the National Association of Daylight Saving, made the statement, in part, as follows:

Mr. Marks. The purpose that brings us here at this time, primarily, is President Wilson's message that the food supply needs increase. If we can have this daylight saving enacted, for instance, as far as New York City is concerned, there are a million people come into New York, Manhattan, every day and go back to their homes every night; they will get there one hour earlier and they will have one hour more of daylight for gardening. Multiply that by the other cities in the United States and the stimulation of gardening is tremendous.

Twelve European countries adopted this, and every one of them gives us a satisfactory report and say it will be a permanent institution even after the war is over on account of, first, increase in production; in the second place, conservation of health, and in the third place the saving in gas and the consequent saving in fuel. In London they figure that 200,000 tons of coal was saved on account of this hour of daylight being enacted, the people going to bed an hour earlier.

You might say anyone can do it without any legislation. We have as an instance, Mr. Colgate, who employs in his factory 5,000 people. He will give you his statement as to how much they gained by it, but you can not do it except in an isolated community like his without falling out with your neighbors.

We want no time-tables changed, only the clock changed; no engagements changed, only the clock changed. And it is not anything mandatory you are doing; you are doing this to help the country's material advance. There is no penalty attached in the bill; they may leave their clocks unchanged if they wish.

Mr. Thomas Nixon Carver, professor of economics, Harvard University, submitted the following statement:

It would be a great help to the movement for the increase of the production of food if workingmen had an extra hour of daylight in the evening of work in their gardens. An hour's work a day in a garden, if wisely directed, will produce an amazing amount of food.

I believe this to be of the utmost importance. Unless something unforeseen happens the world is going to experience the greatest food shortage within the next year that it has known since the Napoleonic wars. The chances are that there will be many hungry people in our large cities before another winter is over, not because there is not enough work for them to do, not because money wages will not be high, but because food will be hard to get at any price. Anything which will enable workingmen to produce a part of their own food is therefore of utmost importance.

Mr. Robert Garland, chairman of the daylight saving committee, United States Chamber of Commerce, and president of the Chamber of Commerce of Pittsburgh, Pa., stated in part before the committee as follows:

Mr. Garland. Mr. Chairman and gentlemen, I represent the Pittsburgh Chamber of Commerce as its president, with over 3,000 members, and also appear as chairman of the daylight-saving committee of the United States Chamber of Commerce. That organization has over 800 constituent members, such as chambers of commerce and boards of trade throughout the country in all the important cities of the country, in every section of the country, in every State, representing over 450,000 members.

We have acted favorably on this question, our committee having presented a report. Some of the members of the committee are here. It was passed unanimously by that

body, meaning that the manufacturers, mercantile houses, and business establishments throughout the country, real estate interests, banking interests, and others that you might call general business interests, are in favor of the proposition.

When we passed upon this question a few months ago it did not seem to me to be so urgent as it does now. As Prof. Jacoby has said, we are "slaves of the clock."

The Senator asked the question, "Would it not be an hour earlier?" It is like this: The man who leaves his house at 8 o'clock in the morning will still leave at 8 by the clock, but at 7 sun time, but when the man goes home at 5 o'clock in the afternoon by the clock, he will be going home at 4 o'clock sun time, and those people, shop girls, clerks, and others who work until 6 o'clock throughout the country will be going home at 5 o'clock sun time, but it will still be 6 o'clock by the clock. We just fool ourselves by changing our clocks uniformly in all the time zones in the country, so one hour is saved of daylight.

The ancient Romans had it down more simple than we have. They saved it. They had their 24 hours during certain months, also 20 hours and 18 hours, according to the sunrise. But the practical thing that impresses me, and should impress every American to-day, is the fact that this one hour which is conserved of daylight can be used to advantage either in military training or in farm gardening. The slogan to-day is "Back to the farm in large units," and in industrial districts, such as I come from, Pittsburgh, it is back to the "vegetable garden" and the "back-yard lot." And that is common all over the country to-day.

So the point I present before you particularly is this, that it would be a great boon to the American people to get this extra hour at this time. I believe if it goes into effect as a war measure that it will continue along in times of peace.

We presented in our report statistics from the different countries. Ten European countries have adopted it, prac-

tically every great country except Russia, and Australia has adopted it within the last five or six weeks. It is a matter that should be given very quick and earnest consideration, because this extra hour not only means economy in the use of electric light and other illuminants, but it means physical recreation for our people, for the men, women, and children of the country, and it means more gardening.

We must recollect that probably 40,000,000 men are engaged in the war, the great majority of them taken from agricultural pursuits; stores and stocks have been depleted both here and in Europe, and it becomes incumbent upon us to take care of ourselves and to help those starving people on the other side. This one hour can be used to considerable advantage in gardening, and to-day we lay particular stress on that one hour for farm-gardening purposes.

I believe, also, Senators, that if you will ascertain from the British or the French commissions, from any of the members who are here, they will say that they not only are satisfied to have this in time of war, but they will also continue it in times of peace. Those are the verdicts we get from these various countries, and we have corresponded with chambers of commerce in Great Britain; we have statistics and reports from the main cities, such as London, Birmingham, Manchester, Glasgow, and other cities, as well as Belfast, in Ireland. We have reports from Vienna; we have reports from Berlin; we have reports from Paris. In England alone, in the short term of five and one-half months, they saved in fuel $12,000,000 in our money, and in France $10,000,000. It means economy, it means efficiency, it means physical recreation for our people, and it means farm gardening to a very much larger extent than we have today, because it gives the men, women, and children that extra hour, and that is the one thing I wish to impress upon you.

We are not particular as to the number of months it is made effective. In the European countries they have taken five, five and a half, and six months. Some people over here

ask for eight months. Some say make it 12 months and do not turn back the clock in the fall. We are not concerned as to that. What we want to do is to get it for the summer term particularly. The chamber of commerce in its wisdom, as I say, representing over 450,000 business houses and business men throughout the country, passed a resolution, which I will leave here as an exhibit, asking for not less than five months in each year.

Mr. A. Lincoln Filene, treasurer and general manager William Filene Sons' Co., Boston, Mass., made a statement strongly supporting the legislation as an emergency measure, as follows:

Mr. Filene. Mr. Chairman and gentlemen of the committee, the daylight saving plan is inexpensive, simple in its method, easy of accomplishment, and laden with benefits to us and our families.

So great has been its benefits and possibilities that it was adopted last year by England, France, Germany, Italy, Norway, Sweden, Denmark, Holland, and Portugal, and this year by Australia, and Iceland. The Canadian Government is awaiting our decision and they are ready to follow it if we adopt the plan.

The success of the plan in Europe is testified to by reports of special commissions appointed to study the matter.

England will continue the plan after the war, though it was originally adopted as a war measure to conserve the material and human strength of Great Britain.

We have heard of no nation which did not experience all of the benefits claimed for the plan.

The report of the English parliamentary commission shows there have been large savings in the lessened danger from accidents toward the end of the workday, in the health of the worker, and in the efficiency of the worker.

If the daylight saving plan is adopted by this country, it will bring additional benefits. Workers, other than those engaged in agricultural pursuits, will have an extra hour of

daylight after the workday is over in which to work their gardens.

The population of the United States is 102,826,309. There are 20,000,000 men and boys engaged in trade, transportation, manufacturing, and mechanical pursuits. A considerable proportion and a large proportion of these are undoubtedly engaged in planting. To them the extra hour of daylight will be of tremendous value. Farmers and other agricultural workers would derive substantial benefits. Children, as well as adults, would have enlarged opportunities for outdoor recreation or useful activity.

The Boston Chamber of Commerce has spent over six months studying the plan and has gone into every phase of it.

Prof. Robert W. Willson, Harvard astronomy department, has prepared the book on Sunrise and Sunset, and is completing tables showing how the plan would operate in every city in the United States of over 20,000 population. One of his tables, showing points in the United States where railroads change their time, I now present to you. Prof. Willson has studied the railroad side of the matter and will be glad to come here to discuss it before you.

The Boston Chamber of Commerce favors the plan for the entire year, but if a shorter period is more feasible, then it favors the shorter period. The United States Chamber, which I represent, makes the same recommendation.

The most important point I want to leave with you is that we need daylight saving now. Every day that passes without the plan means the loss of a precious hour of daylight which could have been utilized in the preparation and planting of the soil, a matter of great importance to us in this crisis. It means that we are not taking the opportunity to conserve the strength of our workers, that we are not conserving our coal and other material resources.

We have a letter from Mr. Gompers, president of the American Federation of Labor, standing for the movement, and a letter from the President of the United States him-

self. The advisory committee of the National Council of Defense has placed its approval on the plan, and also the Massachusetts Committee on Public Safety.

Numerous other representatives of industrial and commercial organizations appeared before the committee in advocacy of the legislation. Among them may be mentioned Mr. F. H. Sibley, vice president National Daylight Saving Association, Rochester, N.Y.; George I. Renaud, chairman Detroit More Daylight Club, Detroit, Mich.; Rufus R. Wilson, secretary National Association of Cotton Manufacturers; and Mr. Arthur E. Holder, representing the American Federation of Labor, Washington, D.C., who made the following statement:

Mr. Holder. Mr. Chairman and gentlemen of the committee, I am not going to consume your time after so many able arguments and statements have already been made to you, but I ask the privilege of reading into the record a resolution passed by the executive council of the American Federation of Labor on January 20 of this year, and it was upon the application for the indorsement of the American Federation of Labor upon the daylight-saving movement.

The first resolution adopted was as follows [reading]:

"*Resolved by the executive council of the American Federation of Labor*, That we urge the inauguration of the daylight-saving project for the conservation of time and opportunity for greater leisure and open-air exercise for the masses of the people, and we insist that in order that the change may be beneficial it must have the general application throughout the whole United States. We will gratefully receive from and actively give to any groups the fullest support in the attainment of the daylight-saving project so long as it shall be utilized for the purposes herein declared."

I might add a personal word, Mr. Chairman, and with that I will not ask for further time.

I have not heard it mentioned by any of the gentlemen who have preceded me, but this daylight-saving plan will afford an opportunity to many thousands of working people, those who work in offices and in factories and in mills and probably in mines and on railroads, so that if they feel disposed they will have an opportunity to use an hour in the evening, or more, to till their gardens. If we are going to start an individual conservation scheme, and it looks as though that idea is going to take root, it will be one of the blessings that will grow out of this world difficulty. It will get the people back to the land, if it is only a square rod or two. It will give them an opportunity to know how to raise produce. It is not necessary to elaborate. You know the benefits that will accrue to individuals and groups, and we stand for this bill, Mr. Chairman, as it is written, because we believe that it covers all of the essential features.

Mr. Sidney Colgate, president of the Colgate Co., Jersey City, N.J., illustrated the advantages of the measure from a manufacturer's standpoint, as follows:

Mr. Colgate. Mr. Chairman and gentlemen, with us daylight saving is a fact and not a theory. We have tried it out; we have been able to try this out because, to a certain extent, although being in a large community, we are isolated; that is, we are probably in lower Jersey City the largest factory and office, and also because our business is isolated; that is, we are not a broker among a lot of brokers; we are not a dry goods establishment among a lot of dry goods establishments; we are manufacturers and we manufacture a trade-mark article, so to a certain extent we can make our hours as we wish them, and we do not have to consider our neighbor right alongside of us. The one thing we have to consider is train accommodations for our employees. That, of course, is very essential.

We started this daylight saving plan in the summer of 1915. We tried it, beginning with the middle of July, and we thought we would try it until the 1st of September.

Toward the end of August we took a vote as to whether we should continue it to the 1st of October, and we got a vote of 94 per cent to continue it to the 1st of October.

Senator Calder. The people among your employees?

Mr. Colgate. The people among our employees. Then again, you should consider that a great many of them were inconvenienced by train service. You see, the train service into New York City is regulated to get the bulk of the commuters in between 8 and 9 o'clock; most of the offices open at 9 o'clock, whereas our people have to get in there at 8 o'clock, so they have to take the service between 7 and 8, which is not nearly as convenient.

It has worked nicely in our office. We see the difference in the morale of the office; we see the difference in the work which we get out of the clerks. I have talked with them and they said that the work seemed to go better in summer than in winter. Some of them said to me, "Mr. Colgate, now we get out at 4 o'clock instead of 5, and we can accomplish something in daylight; we can make little plans for excursions; we can plan to look after our gardens; we can plan to be with our families. It is a very different thing and we feel like working more." The work has speeded up and is very much better in summer time than in winter. Also the hours which they work are better. You know that the last hour of a hot summer afternoon drags with all of us, no matter what we are doing.

I said to one of our employees last summer, "Jim, you do not seem to have taken a vacation this summer. I have noticed you have not been away from the office at all." He said, "Mr. Colgate, I feel that I have had a vacation all summer long, and I have never been in such good condition." He said, "That last hour I get off in daylight is worth everything to me."

. . . . . .

Mr. Robert L. Brunet, public service engineer, Providence, R.I., explained, among other things, the benefits of the legislation "not only as a matter of convenience and

human necessity but also as a war measure of great importance."

Mr. Brunet. Mr. Chairman and gentlemen, after a very thorough investigation of daylight saving our lighting committee of the city council of the city of Providence unanimously passed a resolution approving the daylight-saving plan, providing it is made nation wide, which I will include in the record with the approval of the chairman.

It is as follows [reading]:

No. 125. Resolution approving daylight-saving plan, providing same is made nation wide. (Mr. Austin.)

Approved March 10, 1917.

"*Resolved*, That the city council does hereby approve of the proposed 'daylight-saving' plan, provided the necessary legislation is adopted so as to make the plan operative throughout this country, and to that end the Senators and Representatives in Congress from Rhode Island are respectfully urged to support any legislation having as its object the establishment of the 'daylight-saving' plan throughout the United States; and it is further

"*Resolved*, That a copy of this resolution be transmitted to said Senators and Representatives."

If the time had not been so short we would have had resolutions to present to your committee which we think would have been signed by all of the governors of the New England States.

I have prepared certain charts which graphically indicate the benefits of the plan, not only as a matter of convenience and human necessity but also of the war measure of astounding proportions. I think the American people, as a rule, are looking for economies and conservation, particularly at this time in view of the fact that we have got to prosecute this war with all the efficiency that we can muster. And I also want to show by the first chart (Pl. A) that the plan itself, gentlemen, is just a matter of convenience.

The first chart shows the timezones of the country, placed

in operation by the railroads of the United States in 1883. They suggested at that time that all the territory east of this heavy black line be called the eastern time zone and it be based on the seventy-fifth degree of longitude west of Greenwich; central time is the zone between the next two black lines; the mountain time zone between those two [indicating]; and the Pacific zone as indicated on the chart.

The Chairman. I thought there were five zones?

Mr. Brunet. There is Alaska, which I have not included. As a matter of fact, when it was put into operation, through necessity or otherwise, the actual eastern time zone is shown by this dotted line. There is a variation of about 32 minutes between the sun time and this line, and the sun time and this line [indicating], which shows conclusively, gentlemen, that time is a matter of human convenience. The reason the line varies on this chart and looks like a snake is due to the fact that the railroads found it most convenient to change times at certain points in passing from one zone to the other, and incidentally Florida desired to be in the central zone instead of in the eastern zone because so much of its business was between it and the Southern States west of it.

Senator Kellogg. Those zones have adjusted themselves in their present form through railroad and business convenience?

Mr. Brunet. Absolutely.

Senator Kellogg. And have been settled for many years?

Mr. Brunet. Yes, sir.

The Chairman. Why do you not conform your zones to the established lines that now exist?

Mr. Brunet. Because, for instance, Buffalo, or some other city, would prefer to be in the eastern-time zone instead of the central.

Senator Kellogg. They do; this bill conforms it to exactly the same thing.

The Chairman. Your chart does not.

Mr. Brunet. This is a recommendation and this is the

actual time zone. We do not propose to change the time zones in any sense whatever.

The Chairman. That is what I want to know. I thought you did in those particulars indicated by those black lines.

Mr. Brunet. The next point I want to show is for the month of June as shown by Plate B. It shows the present schedule under which we operate and the proposed schedule under the daylight-saving plan. The sun rises in the month of June at about 4.20 o'clock in the morning.

Senator Kellogg. What zones are you speaking of; the eastern?

Mr. Brunet. Yes; any zone. This is just the average condition: The sun rises at, say, 4.20 o'clock in the morning; we have daylight from 4.20 until 8 o'clock. Under the daylight-saving plan we take an hour off the morning and add it to the evening period. So we have extended our time so we may have an hour gardening, etc., and the difference is shown on the chart.

The next chart (Pl. C) shows the conservation that we can effect in our use of artificial light. This chart shows the use of light in an average home during the whole season. For instance, in the month of January we use light about six and one-half hours a day; going down to June we use light about 4.55 hours a day. With such a saving plan we estimate that for the five months proposed we will cut our lighting bills down to about one-third what they have been in the past, which is a tremendous item. For the city of Providence, R.I., alone, we can save $62,000 for the time, based on the estimate of the public utilities commission, and that represents about 40 per cent per capita, and for the whole United States I have estimated the conservation will approximate $40,000,000.

Senator Kellogg. In the lighting by the people?

Mr. Brunet. In lighting by the people of the country.

The Chairman. Does that include the fuel item?

Mr. Brunet. That includes the conservation, what the people individually will save by the reduction of their bills.

The Chairman. The lighting alone—have you figured the fuel saving?

Mr. Brunet. That is figured for fuel saving; yes.

The legislation is indorsed by many boards of trade, chambers of commerce, and other commercial and civic organizations to the number of many thousands. Thousands of letters have been received in advocacy of the legislation.

Prof. Harold Jacoby, an eminent astronomer, appeared in support of the legislation, and declared that no scientific reasons or conditions exist why it should not be enacted. His statement is in part as follows:

Prof. Jacoby. Mr. Chairman and gentlemen, stating in the briefest possible way, and to clear up the point raised by Senator Robinson just now, Chicago under the new arrangement will use eastern time in summer and central time in winter. The words "eastern and central time" will mean in the future exactly what they now mean.

Senator Kellogg. The time will be the same as now in winter?

Prof. Jacoby. The time in winter will be the same as now, and in summer, instead of using the time they now use, they will use eastern time instead of central time, and that will be an hour later.

It requires almost no time to explain the purpose of this movement. In summer the sun rises earlier than it does in winter. The period of sunlight is appropriate for work; the period of darkness is the period appropriate for sleep, and the time of year when the sun rises earlier it is logical and sensible to get up earlier. Many people do it now. We simply have a device to enable everybody to do it without inconvenience.

We think that this can be put into the laws of the United States under the provisions of the Constitution, which gives Congress power and makes it its duty to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures. This is a standard for the

measurement of time, and under the power of the Constitution we feel that Congress can act, and we feel morally certain that no one will by a suit attack any act that might be passed in this way.

The most important detail to add to this is that the railroads, with whom the matter of time is most important, will not be required by this change to do anything whatever. A train like the Empire State Express, which leaves New York at 8 o'clock now, will always leave New York at 8 o'clock as it now does. No number need be changed in any time-table at all.

The Chairman. As a matter of fact, will it not leave an hour earlier?

Prof. Jacoby. Of course it will in summer, but it will leave at 8 o'clock by the clock; therefore, since people take their time from the clock, it will leave at the same time as far as they are concerned.

Now, this plan is not without ingenuity. It looks like making something out of nothing, and when we advocated this plan several years ago it was just as good then as it is now, but it seemed like an academic question, and I, who live in an academy, know that an academic question will never receive consideration.

But here we have an emergency. Why, gentlemen, if we can get the clocks moved forward an hour to-morrow we may be able by the end of this summer to produce, and through that alone, an appreciable impression on this war question. We feel now that that which before was desirable has become infinitely desirable, and instead of being an academic question it is a thing which 10 or 12 nations of Europe have put into effect, and after using it a year, have decided to continue.

Senator Kellogg. Have all the nations of western Europe got it?

Prof. Jacoby. Yes, sir.

Senator Kellogg. Great Britain and France?

Prof. Jacoby. Great Britain, France, and Germany; and Germany was the first.

Mr. Marks. Eleven countries, England, France, Germany, Austria-Hungary, Italy, Sweden, Denmark, Norway, and Holland. In addition to those countries, this year Portugal, Australia, Iceland, and Bermuda have adopted it.

Prof. Jacoby. Germany was first and England followed soon.

Senator Kellogg. Let me ask you this other question. Do you place the validity of this act on the provision of the Constitution authorizing Congress to fix a standard of measures to govern time as well as everything else? This bill also might possibly be sustained as to one provision of it as to regulating the time of interstate carriers, might it not?

Prof. Jacoby. Yes, sir.

Senator Kellogg. Assume that it was valid as a regulation of interstate carriers, and invalid as to where it undertook to fix certain other rules of time, would it be effective if it went into effect for that purpose, would it be accepted by everybody, do you think?

Prof. Jacoby. I think so.

Senator Kellogg. Even if it was simply valid as to interstate carriers, it would become effective?

Prof. Jacoby. I am sure it would, because I was in the game when standard time was introduced in the early eighties. I was then assistant to the president of Columbia College, and there was no legislation needed after the railroads accepted it at that time.

I wish to say that I am not here to pass on legal questions involved, but as one to certify that there exists no scientific reasons, no reason known to astronomers why this should not be put into effect.

Opposition to the measure was expressed by Mr. D. C. Stewart, superintendent of passenger transportation, Philadelphia Railroad, Philadelphia, Pa. His statement, in the main, is as follows:

Mr. Stewart. Mr. Chairman, I think, with your permission, I can narrow down very quickly to one point all I want to speak about.

As we understand the bill, the zones are to be practically on the lines of the present zones—

The Chairman. That is our understanding.

Mr. Stewart. And if the bill becomes a law the Interstate Commerce Commission will specifically designate the line, so that instead of following the exact lines of longitude they will take in junctions and such like, to permit economical and convenient operation. So I do not think it is necessary to say anything about that.

The only other point in the bill, as I see it, which would affect the railroads, is the moving of watches and clocks one hour ahead or one hour back, and I might just say that on the railroads of the East, or any double-track railroad, or three or four track railroad, I do not see that that is objectionable. I think it may be just as well to say here that if the question should be asked as to how they managed this in Europe, I would say it applied where the conditions over there correspond very closely to such railroads as I have mentioned, namely, those with more than one track.

In this country, in the South and West, we have single-line railroads thousands of miles long, and these railroads are operated under train rules, train orders, time-tables, and clocks and watches.

Under the rules and the time-table one train is superior to another running in the opposite direction on the same track and safety depends upon observance of the rules and the time-tables by both trains. Watches are essential to a compliance with the time-table.

We are here to-day primarily to tell you gentlemen just what would occur on those single-track railroads—not just because we want to object, but just to state what will occur. These railroads will have trains on the road at the time the change takes place. some superior and having rights over the others, and the inferior trains must give the superior

trains a clear track. When, by law, watches are changed back or earlier by one hour and the superior passenger trains become automatically one hour ahead of schedule, and have no status at all on the railroad, a dangerous situation is created.

Senator Kellogg. That is only twice a year.

Mr. Stewart. That would be twice a year, but that is plenty often enough. Every time it occurs it is a danger spot. An inferior train running against a superior train would have to clear that train. The question would come up, with an extra train on the road which would have to clear a schedule train in either direction, because both are superior. The question arises, How would that be accomplished and what should be the instructions to those men, and how will they understand the situation? That is where the danger comes in. If there should be one man on the railroad or on any railroad who misinterprets his instructions, or if he makes a mistake in changing his watch—if he wants to change it an hour and he does not change it quite an hour, or if he wants to change it forward and inadvertently changes it back—there is nothing that stands between that man and a wreck.

The Chairman. The same thing might occur if his watch did not keep time, or if he failed to set his watch when it stopped, or failed to wind it, or anything of that sort.

Mr. Stewart. That is an element of danger which would be eliminated if there was a way of doing it. But you are not inviting a further danger by that condition.

Senator Kellogg. Can not the railroads arrange to make that change first at a time of the day when the fewest number of trains are running, say, at midnight?

Mr. Stewart. They can. The fewest—

Senator Kellogg. Would be running at midnight.

Mr. Stewart. For instance, I am assuming from the bill that it would be the same hour all over the United States. That might be a time when a great many trains are on some railroads.

Senator Kellogg. But the bill does not provide that.

Senator Calder. There is nothing compulsory about it. The railroad company could fix their time at midnight or 6 the day before or 6 the next day. There is no penalty.

Mr. Faulkner. The bill says 2 o'clock.

Senator Calder. Nothing could prevent you refusing to change the time.

Mr. Stewart. That would still leave the condition which we have described. Two o'clock in the morning would probably be the most favorable time.

Senator Kellogg. This bill does not force you to do it—that is, one particular hour—and if it does, it can be changed.

The Chairman. It does not force it at all. It simply provides a statutory standard time, but there is no penalty attached to it and no means of enforcing it. Suppose the railroad says, "We will pay no attention to that"?

Mr. Stewart. Well, Mr. Chairman, we are law-abiding people.

The Chairman. As a matter of fact, they would not do that, of course. It would be very inconvenient to you if you undertook not to observe it and everybody else was observing it. The confusion would be great.

Senator Kellogg. You say there is no objection to it at all by the double-track or three or four track railroad?

Mr. Stewart. Nothing that can not be overcome safely.

The Chairman. Your objection, if I understand, is that it tends to create confusion which might result in accident?

Mr. Stewart. Absolutely.

Mr. Faulkner. That is the only ground.

The Chairman. On two days during the year.

Mr. Stewart. Two days during the year.

The Chairman. When the changes are made.

Mr. Stewart. Yes, sir.

Senator Kellogg. It appeared here that there would be great benefit to a large number of employers—in fact, practically all the employers of labor—to have in those long

summer months an hour early in the morning and an hour at night; that it would benefit not only the employer of labor or manufacturer but the employee, and so far as I have been able to obtain information, nobody has contradicted that. May I add to that that there would also be a large saving in cities in the matter of lighting contracts, etc. There was no statement to the contrary that I heard, or that I have been told of outside. What have you to say about that?

Mr. Stewart. That might all be true, but I could probably answer you fully if I should ask you a question. I do not know whether it is permissible or not.

Senator Kellogg. Certainly.

Mr. Stewart. Did you have any expression from a person who was acquainted with railroad operation?

Senator Kellogg. I was not talking about railroads at all. I was talking entirely about the industrial employees outside of railroads. I have been told by railroad men that it was a good thing, but I did not go into it. The hearing the other day, I think, was only industrial, was it not?

Senator Calder. Yes. The statement was made here that Mr. Willard, of the Baltimore & Ohio, favored it.

Mr. Faulkner. It is strange I have not heard it if he has.

Senator Calder. He was present at the meeting of the advisory committee of the National Defense Council and voted for it.

Senator Kellogg. Yes, it was so stated.

The Chairman. Yes, here is a memorandum to that effect now, and also a memorandum as to the presence of Mr. Trumbull and President Underwood, who are, as you well know, prominent railroad men.

Mr. Faulkner. I represent all those companies, and I have no information of that.

The Chairman. I did not mean to provoke an argument about the matter, and Mr. Stewart has stated in a word the only objection that I have found to this bill. It is demanded by nearly all the industrial concerns in the United States I referred a while ago to in the communications I have had.

I think my mail has been increased by hundreds of letters and telegrams each day, and I have already stated that I know most of those were prompted; that is, some one has suggested the telegrams or has had the letters written. But, in addition to that, the subject has been studied by the heads and officers of the boards of trade and chambers of commerce throughout the United States, and they presented some figures here to show the probable economies that would result if this measure were adopted. They claim that in the gas and electric light bills it will result in a saving of something like $40,000,000 a year to the people of the United States if it is enacted and observed; and in addition to that it will afford opportunity for many persons to engage in small farming and horticultural activities, and it will mean a very material increase in the food supply. In addition to that it will add to the comfort and convenience and pleasure and happiness of the people who work, and that, all told, the experiences in European countries where it has been put into operation have so cordially approved it that it ought to be passed now by Congress, notwithstanding the fact that we are dealing almost exclusively with what may be called emergency and war measures.

Mr. Stewart. Is it true that Germany abolished it after two or three months' trial?

The Chairman. Not according to our hearings here. The statement was made here that no country that had ever tried it had ever abolished it.

Mr. Stewart. I have no evidence in my possession from which I could make the statement, but I understand that Germany abolished it after two or three months' trial. I do not know whether that is true or not. Mr. Chairman, may I ask if what you had from President Underwood was directly from him?

The Chairman. No; it was a statement by some witness.

Mr. Stewart. I happen to have a letter in my correspondence here from Mr. Underwood to Mr. Atterbury, which I think is now only fair to refer to. It was not intended to

be presented in evidence, but this is his statement to Mr. Atterbury. He concludes by saying:

"I am fully in accord with the views expressed in the inclosures, but could never consent to any change except it be made permanent, and I do not see how a single-track line could consider for a moment the proposed annual change."

Senator Calder. Who is that from?

Mr. Stewart. That is from Mr. F. D. Underwood. With the permission of the committee I would like to read the resolution of the American Railway Association itself on the subject.

The Chairman. We will be glad to have it.

Mr. Faulkner. It bears on another subject too.

Mr. Stewart. I will simply read the resolution [reading]:

"*Resolved*, That in accordance with the recommendation of the committee on standard time the special committee on relations of railway operation to legislation be advised that any legislation excepting that which provides for a permanent change and which recognizes the present standard time zones shall be opposed on behalf of railways."

Senator Calder. When was that adopted?

Mr. Stewart. It was adopted—this letter was written February 21, 1917. The subject was considered by the executive committee at its meeting as the executive committee of the American Railway Association, which meeting was held February 16, 1917, in accordance with the recommendation of the committee on standard time.

The Chairman. Here is a statement by Prof. Jacoby, who is an astronomer, and who was at one time assistant to the president of Columbia University. He stated before this committee as follows:

"We feel now that that which before was desirable has become infinitely desirable, and instead of being an academic question it is a thing which 10 or 12 nations of Europe have put into effect and after using it a year have decided to continue.

"Senator Kellogg. Have all the nations of western Europe got it?

"Prof. Jacoby. Yes, sir.

"Senator Kellogg. Great Britain and France?

"Prof. Jacoby. Great Britain, France, and Germany, and Germany was first.

"Mr. Marks. Eleven countries, England, France, Germany, Austria-Hungary, Italy, Sweden, Denmark, Norway, and Holland. In addition to those countries, this year Portugal, Australia, Iceland, and Bermuda have adopted it.

"Prof. Jacoby. Germany was first and England followed soon."

And then the statement is continued. Now, with respect to the attitude of Messrs. Trumbull and Underwood, I think perhaps I should say that I have no authority from them to represent their attitude here, and was merely referring to something that was said at the hearing the other day. I do not know how either of those gentlemen view the question, and we will be very glad, if you do, to have you present their view of it.

Senator Kellogg. I suggest that Mr. Faulkner be given that record in order that he may read what they say.

The Chairman. I think it would really be interesting to you, Mr. Faulkner.

Senator Kellogg. I would like to have the railroads consider carefully whether the benefit to the public would be such that they would advocate it rather than oppose it.

Mr. Faulkner. We thought we ought to present the dangers and then if the committee determined to pass the bill, of course they would assume the responsibility.

. . . . . .

Senator Calder. Of course we do not think—at least, I do not think—it is a change back. It is simply turning the clock ahead. You run right on with your same time-tables.

Mr. Faulkner. You would have the same time-tables, but at the same time there is a change there. All the changes

in watches have got to be made by all the men on the road, but I do not think it is worth regulating it for two months or one and a half months in the summer. Let it go into operation as this is now the time. It should occur from September to April. It should go into effect the first Sunday of April, as you have it in the bill, and, if possible, not have any change until September. Our people have thought that there ought to be only one change, but that, of course, is a matter that you gentlemen must decide—whether you must change back for the winter and change up for the summer.

Senator Calder. You gentlemen have referred to the danger of risk by accident. There has been no complaint in England, and their problems are as great as ours.

Mr. Faulkner. It was the double-track roads. He has stated that very frankly to the committee.

The Chairman. He said it would not be of any inconvenience to the double track, but that it would to the single track, and has demonstrated to my satisfaction that it will be inconvenient to them and attended by some danger.

Senator Calder. There must be some single-track roads in Europe.

Mr. Stewart. I wish you would not say "inconvenience." We do not care about that. We have never mentioned that. I would not want to mention that; I would not want to have you understand for a minute that I am here on the subject of "inconvenience." It is absolutely for safety, and nothing else. It is not the cost or convenience, or anything of that kind.

The Chairman. I see that it will be of some inconvenience.

Mr. Stewart. We would never appear here on that account.

Senator Kellogg. And some risk.

Mr. Faulkner. There would be some inconvenience, but inconvenience would not stand in the way where the safe management of railroads is concerned.

Senator Calder. I can only see a very minimum of danger.

Mr. Faulkner. How many trains are on the road at that hour of the night, say 2 o'clock a.m.?

Mr. Stewart. This report is not separated as between single and double track railroads, but a record has been taken on all. On all the railroads it would be necessary to change the clocks and watches to the number of 1,698,818, and to get them all changed without confusion would be rather difficult.

Senator Calder. That many clocks and watches?

Mr. Stewart. On the railroads; and on all the railroads of the United States at 2 o'clock in the morning the record made shows, including single and double track railroads and four-track railroads, there would be approximately 1,000 passenger trains and 5,000 freight trains out on the roads when the change would be made.

Senator Kellogg. Mr. Chairman, I would like to have Mr. Stewart read over this record and add any statement or letters or telegrams that he cares to. I shall have to leave the committee, but I would like to have him do that, because I shall read the record with care.

The Chairman. You may do that, Mr. Stewart. You may incorporate any letters or resolutions that you have, and if you want to call special attention to any of them we will be glad to have you do it.

Mr. Stewart. I have read you the resolution. I do not have a record of the discussion on the resolution. I have the resolution itself, which I have already put into the record, and I also have made a statement in connection with the zones and one with regard to the number of watches and clocks and the effect on operation of trains. I do not have anything else.

Senator Calder. May I ask you a question, Mr. Stewart? The American Railway Association has always fixed the standard of time for the zones, has it not? There is no governmental function that has ever taken that up?

Mr. Stewart. Those zones were adopted by the railroads in 1883, and they have existed as they are until the present time.

Senator Calder. You have made some changes of stations, have you not, and there are some cities where they have changed from one zone to another?

Mr. Stewart. The railroads have made no changes that I know of. The city of Cleveland, as a city, did.

Senator Calder. And Detroit also?

Mr. Stewart. I think so. I would not state it as a fact, but I have no knowledge of the railroads having changed it.

Senator Calder. So the only authority in the country for the present zones or changes in the zones are the railroad companies?

Mr. Stewart. The railroads adopted—that is, the railroads formulated the scheme and put it into effect, I understand. It can be verified easily enough—but the Government at that time, in some way or other, placed its approval on the matter.

Senator Calder. I have looked carefully through the records to find out whether the Government has ever approved it, but can not find it.

Mr. Stewart. There were 83 standards of time in the United States until 1883. I do not know when they commenced, but up to that time there were 83 standards of time. Mr. W. F. Allen, an old railroad man, who was for a long time general secretary of the American Railway Association, and who died about a year ago, was known as the father of the present time system, and he and the gentlemen who were working with him on the question worked out these zones, and, independently of any Government or State action, they were adopted by the railroads. But I have heard Mr. Allen say on one occasion, on the twenty-fifth anniversary of the present time system, in a speech in Chicago, that the Government had afterwards approved the system.

Senator Calder. Well, perhaps it may be in some department of the Government.

Mr. Stewart. I do not know in what form it was.

Senator Calder. There has never been any legislation on the subject, has there?

Mr. Stewart. I do not think there has been any legislation on the subject.

Senator Calder. The effect of this bill would be to take from the railroad companies the right to effect zones, and give it to the Interstate Commerce Commission.

Mr. Stewart. I do not believe the railroads would want the right to change them, if they are left as they now are.

The Chairman. Mr. Stewart, we are very glad to have had you appear before us, and we appreciate your explanation of the difficulties that arise concerning this matter in connection with the railroad service. If you have nothing further to state, the committee will adjourn.

Mr. Stewart. Mr. Chairman, I want to say in conclusion that we are neither pessimists nor obstructionists in this matter. We just wanted, in as plain language as we could, to place before you gentlemen our view of it. I thank you very much.

The hearings contain information as to the result of similar legislation in foreign countries. It is believed by the committee that the possible benefits to be derived from such a measure are more than sufficient to offset the objections which have been presented. It is recognized that those objections are not without some foundation and force. In view, however, of the increased food production which will be brought about under the bill, the comfort and convenience which it will bring to laborers and the public generally, and the saving of expenses, especially relating to light and fuel, it is believed by our committee that the measure should be enacted.

It is thought best, however, not to attempt to apply its provisions to the present year, since it is quite likely that the greater part of the period in which daylight saving is to be accomplished will be gone before the legislation is

finally passed. For this reason the amendment making the act effective on January 1, 1918, is reported.

ACT OF AUGUST 20, 1919.

An Act for the repeal of the daylight-saving law.

41 St. L. Part I, c. 51, p. 280.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 3 of the Act entitled "An Act to save daylight and to provide standard time for the United States," approved March 19, 1918, is hereby repealed, effective on approval of this Act, when by the retarding one hour the standard time of each zone shall be returned to and thereafter be the mean astronomical time of the degree of longitude governing each zone as defined in Section 1 of said Act approved March 19, 1918. C. 51, 41 Stat. L., 40.

This Act was passed over the President's objections by a two-thirds vote of both Houses.

66th Congress, 1st Session. HOUSE OF REPRESENTATIVES Report No. 42.

REPEAL OF DAYLIGHT-SAVING LAW.

June 13, 1919.—Referred to the House Calendar and ordered to be printed.

Mr. Esch, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany H.R. 3854.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 3854) for the repeal of the daylight-saving law, having considered the same, re-

port thereon with a recommendation that it pass, with the following amendment:

Strike out the last two words of line 5 and up to the word "after" in line 6 and insert in lieu thereof the following: "on the last Sunday of October, 1919."

The act approved March 19, 1918, entitled "An act to save daylight and to provide standard time for the United States" was enacted as a war measure. A leading argument made in its support was to increase war production. That as France, England, Italy, and other warring nations of Europe had followed Germany's lead in this matter, we, too, must follow. With the signing of the armistice, the war practically ended, and our people believe that normal conditions of living and also of production should be restored as speedily as possible.

The above act, besides providing for pushing ahead the clock one hour on the last Sunday in March and retarding it one hour on the last Sunday in October, established five zones, the standard time of the first zone being based on the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich; that of the second zone on the ninetieth degree; that of the third zone on the one hundred and fifth degree; that of the fourth zone on the one hundred and twentieth degree; and that of the fifth zone on the one hundred and fiftieth degree, which only includes Alaska.

The Interstate Commerce Commission has fixed the limits of these zones and the standard time of the zone governs the movements of all common carriers engaged in interstate commerce. The seventy-fifth, ninetieth, one hundred and fifth, and one hundred and twentieth meridians pass approximately through the centers of their respective zones; there is, therefore, a discrepancy of at least one-half hour from the mean astronomical time along each meridian, at the eastern and western boundaries of each zone. When, therefore, under the act clocks are advanced one hour, this discrepancy is increased to one and

one-half hours. It is this wide and unnatural discrepancy which has given rise to much of the opposition to daylight saving.

For years the railroads of the country had arbitrarily divided the country into zones largely corresponding to the zones fixed by the commission in its order dated October 24, 1918. The commission made many radical changes in the limits of the several zones. This was particularly true as between the eastern (seventy-fifth degree) and central (ninetieth degree) time zones. Under the older railroad zone system the division line ran close to the Ohio-Pennsylvania boundary line. It now starts at Toledo, Ohio, and passes through Columbus, Huntington, W. Va., Nashville, Tenn., Atlanta, Ga., and Apalachicola, Fla. It will thus be seen that over one-half of the State of Ohio is now in the eastern time zone. The millions of people living in this territory had their clocks advanced one hour by action of the Interstate Commerce Commission taken pursuant to the above act. This in itself would have created sufficient confusion and inconvenience, but when in addition to this one hour the clocks were advanced another hour under section 3 of the act widespread discontent and resistance has resulted. Other like conditions have been created in other parts of the country, but owing to a lesser density of population fewer complaints have been heard.

The hearings disclose that there is almost universal complaint from the coal miners, truck gardeners, and farmers in eastern Ohio, Indiana, and Illinois. The coal miner, as a rule, does not live at the mine mouth, but in a town or city some miles distant. He must get up before sunrise to get his breakfast, make his train, or car for the mine to start the day's toil at one hour ahead of sun time. His wife must get up even earlier than he does to prepare his breakfast. He finishes his work while the sun is still high and returns home, but must go to bed while it is still light in order that he may secure sufficient sleep for his next day's work. For men engaged in such dangerous and

arduous work as coal mining Congress should legislate to lighten their burdens, and their comfort and necessities should more strongly appeal to us than the pleasure and convenience of others.

Daylight Saving and the Farmer.

The most numerous class opposing the present law is the farmers. Their objections are well founded. As they must maintain their relationship to the public school, the church, the store, and the bank, they feel compelled to observe the law, notwithstanding the fact that the law is not mandatory. They find it difficult and often impossible, if they observe clock time, to get assistance from their children in doing the customary farm chores if the children are to reach school at the advanced hour each morning. Village and city stores observing the present law close at 5 o'clock sun time—the very best hour in the whole day for harvest work. The movies and other places of amusement begin while he is still in the midst of his work. Churches close their evening services while it is yet daylight. As to all this, proponents of daylight saving urge that the farmers ought to be willing to adjust themselves to the new conditions notwithstanding the inconvenience and loss such conditions may entail. The farmer with greater reason might ask that the dwellers in cities should do this adjusting; that as his labor produces the food for both urban and rural populations and during this war for the armies and people of Europe, he is entitled, now that the war is over, to enjoy the normal conditions which existed since the birth of the Republic.

The present law works a hardship upon the dairy farmers and truck gardeners, in that they must get up early enough to get their milk and vegetables to the depot for shipment to the cities in a sanitary condition, and, as to milk, early enough for the breakfast table. This means early rising for the housewife and for all members of the family. It disturbs nature's plan for both man and beast.

Under the statutes of some States milk, after milking, must be cooled to 60° and even pasteurized before being put aboard milk trains for market. All this takes time and compels early rising.

A most frequent cause of complaint arises from the inability of farmers and their hired help starting early in the morning because of the dew. From one to two hours are lost waiting for the sun to dry the fields. Under sun time at least one hour would be saved and could be added to the latter part of the afternoon. This hour, as every farmer knows, is the best for harvest work of the 24. Under the present law hired farm labor in many parts of the country, and in rapidly increasing extent, quits with the blowing of the whistle in the near-by town. With stated hours of labor, time lost or unprofitably employed for the first hour or two of a clock-time day means loss to the farmers and will inevitably result in an increase in the cost of food.

The disparity between present time and that observed before the enactment of the daylight-saving law in the eastern half of Ohio, as above set forth, and in other sections like circumstanced, places the farmers living therein under a severe and unfortunate handicap.

That hired labor on the farm is rapidly assimilating the hours and methods of labor in the industries was brought to the attention of the committee by Thomas C. Atkeson, representative of the National Grange, Patrons of Husbandry, the largest organization of farmers in the United States, with State organizations in 33 States and with 750,000 dues-paying members. Mr. Atkeson said:

We are adopting rapidly the eight-hour day on the farm. On my own farm it was done to some extent last summer. If that eight-hour day was the standard time, and we are about halfway between these two standard times, between the eastern and the central standard time, a large percentage of the farm operations can not be carried on successfully and profitably in the early morning. We can not be-

gin cutting wheat with our binders because it is too wet, first, as a mechanical proposition, to be successfully handled; it is too wet to be put away, and so we loaf around an hour in the morning waiting for the dew to dry off, and then we go to work, or maybe two hours, if it is a damp morning. But our men quit at 5 o'clock in the afternoon, and they have done maybe six hours' work when they ought to have done eight. There are certain crops like beans and potatoes, and some others, that every farmer with a grain of horse sense knows ought not to be cultivated when the dew is on, and so if it is the time for cultivating those crops he loafs or does some chores that are unprofitable, and at 5 o'clock in the afternoon, which is 4 o'clock by the standard time, as you move up, and then the sun is at an angle of 45° or more, and you have the productive energy of the farmers curtailed anywhere from 12½ to 25 per cent. It would not be so bad if we could continue to begin in the morning at 4 o'clock and work until 8 or 9 o'clock at night, as was the universal practice some 40 or 50 years ago on the farm. But our labor-union people have taught us a lesson, and we have come to a place now where the farmers of this country are going to advocate that no farmer's boy shall strike a lick until he is 16 years of age and that no farmer's wife shall cook a meal except she gets credit on an eight-hour basis.

If you want to cut off 25 per cent of the productiveness of the American farmer, just keep this law on the statute books, and we have not any fear if it does cut off our food productivity 25 per cent, because our Agricultural Department is authority for showing that the smaller the crop the larger the pay we get. We are not going to pay if this is cut off. I want to serve notice on everybody to that effect, and we will make it a six-hour day, if you want it, and this is what this does in many farm operations. We will stand just as much of that as anyone, and we have reached that place in this country where we may say this with every assurance.

You can pass laws for the soldiers going back on the

farm, but they are not going to go there without it is more profitable than some place else.

If my theory is right that this law will decrease the productivity of the country 12½ to 25 per cent—and there is not a single farmer in the country who will not agree that that is true—somebody will have to pay for that 12½ per cent, and we will sit around for the dew to dry off while that bill is paid. That is just as demonstrable as mathematics can demonstrate it.

Health and Daylight Saving.

A chief argument for daylight saving is that it promotes health, especially that of the dwellers in cities, by affording a larger portion of daylight for outdoor work and sport. This may readily be conceded to a certain extent, but not to the extent claimed. Work in war gardens, if continued now that peace has come, is healthful and in a way productive to those who are able to own or lease the necessary land, but means nothing to the teeming thousands in the crowded tenements who are the very ones who would be most benefited. They, in the heated season, after their day's toil, find little relief in the hour of added daylight. What they want is relief and an opportunity to sleep.

We live in a fast age; we can not crowd enough into the ordinary day so we by law rob night, or the normal period of rest, of an hour. Our soldiers grew healthy and strong because a sufficient time was prescribed for sleep. With twilight as late as 9 o'clock, by clock time, "sitting up late" is becoming a habit with thousands of children as well as of grown-ups. Some writers and teachers have called attention to the growing irritability of children and to a reduced efficiency in school work due to a marked shortening of the hours of sleep. What children, as well as older people, need in these days of tension and excitement is not so much an increase of the hours of daylight as of sleep—"sleep that knits up the ravelled sleeve of care."

Saving of Coal.

Much stress has been laid by proponents of daylight saving upon the fact that about 1,250,000 tons of coal were saved last year. The claim is not capable of demonstration. When it is remembered that our total coal consumption last year amounted to about 600,000,000 tons, this alleged saving is quite inconsequential. The shortage of coal last year, due to congestion of traffic and inclemency of weather and to the need of strictest economy on the part of the people in all sections, renders any claims of coal saving based on the present daylight law very questionable.

Who Oppose the Law?

Practically every farmers' organization in the United States.

Over 300 farm papers and magazines.

The legislatures of Arizona, South Dakota, Illinois, and Wisconsin, which have sent memorials to Congress. These States have a population of over 10,000,000. Many village, township, and county organizations through resolutions adopted by their respective officials.

The Illinois State Labor Federation.

The Federation of Labor on the 10th of this month at its annual convention now being held at Atlantic City, N. J., by a vote of 450 to 180 voted down a resolution protesting against the repeal by Congress of the daylight-saving law.

Canada after enforcing daylight saving as a war measure has, since the signing of the armistice, repealed it.

The Amendment.

The committee recommended an amendment of the bill by making the repeal of the third section effective "on the last Sunday of October, 1919," instead of the third Sunday after the approval of the act. It was persuaded to do this because the legislatures of the States of New York and Pennsylvania had enacted laws in conformity with the

Federal act. If Federal repeal became effective on the third Sunday after approval it would result in great confusion and conflicts which would result in litigation. This it was asserted would be true with reference to contracts of insurance, negotiable instruments, contracts of deliveries, service of legal papers, etc.

Amendment of Title.

The title of the bill should be amended so as to read:

A bill providing for the repeal of section 3 of an act entitled "An act to save daylight and to provide standard time for the United States," approved March 19, 1918.

. . . . . .

[Addenda omitted.]

Views of the Minority.

It is with regret that some of the members of our committee can not join the majority in recommending the passage of House bill 3854 for the repeal of the daylight-saving law.

Senate bill 1854, Sixty-fifth Congress, to save daylight and to provide standard time for the United States, was before our committee for nearly a year, and was most carefully considered by it, and was favorably reported on February 9, 1918; was passed by both Houses, and approved March 19, 1918.

After said act has been in practical operation for only about one year, we are asked to repeal this beneficent statute simply because it has to some extent inconvenienced some of the people in some of the zones established in pursuance of said law.

Hearings on H.R. 3854 have been brief and meager, as only two days of the committee's time were given to such hearings.

The act to save daylight, approved March 19, 1918, did not take the place of an existing sun-time standard. The

railroads of the United States adopted for their purposes standard time in 1883. The time zones or belts established by the railroads were substantially the same as have been established under the law now sought to be repealed. The zones were practically 1,000 miles in width from east to west. The railroads for their convenience and safety of operation established without authorization of law absolute and arbitrary clock time for each zone. When first established, in 1883, many localities continued to use meridian or sun time, but finally voluntarily adopted the railroad standard time. Both railroad standard time and standard time authorized and established under the act of Congress now sought to be repealed correspond in some portions of each of said zones with meridian or sun time. In the zones now established a line running from north to south in some portion of each zone corresponds exactly with meridian or sun time; therefore, in so far as actual sun time is concerned, the zones established by the Interstate Commerce Commission under the act now sought to be repealed are in application and effect exactly the same so far as the farmers are concerned. The only difference is that under the act of Congress the clocks in each zone are advanced one hour on the last Sunday in March of each year and retarded one hour in each zone on the last Sunday in October of each year, whereas under the railroad standard time there was no advancing or retarding of the clock at any time during the year. In the establishment of zones under the present law, some of the zone boundaries were changed, but not to any great extent. Portions of eastern Ohio that were in central time under the railroad zones have been placed in eastern time by existing zones. This, in effect, advanced former standard time one hour. Then, when the clock was advanced one hour on the last Sunday in March of each year, it had the effect of making a change of two hours as against the former standard railroad time. This of course caused a sharp inconvenience to such of the population as are required to pursue their avocations with refer-

ence to clock time in order to make use of the railroad trains serving such territory. Especially is this true with reference to truck growers in eastern Ohio and with reference to some coal miners, as has been shown in the hearings on this bill; but it is very evident that local train schedules can be so changed, either by the Federal Railway Administration or by State action, when the railroads are released, as to avoid all inconvenience that may be caused to the miners of the sections affected, and to also mitigate the inconvenience of the truck growers in said sections.

But the largest volume of complaint that has been made comes from the farmers, or some of the farmers, in the large wheat-growing, hay-producing States such as Kansas, Nebraska, Oklahoma, Missouri, Iowa, Illinois, Minnesota, and the Dakotas. But nowhere in any of these States is there any hours-of-service law that applies to labor on the farms. But it is claimed that through the actual wheat cutting and harvesting period, which only lasts for a very few weeks in each year, that the hired labor that it becomes necessary to employ during this period, practically demands an eight-hour day, and it is complained that often the dew is so heavy in the early morning that wheat cutting and threshing can not begin as early as it is necessary to begin on account of the advancing of the clock one hour during the harvesting and hay-saving period. It does not appear that the farmers using hired labor during the harvesting period can not begin work one hour later, thus causing the eight-hour day to continue one hour later in the afternoon, and in this way get all the benefits that they could get by not having the clock advanced one hour during such period. Besides, it does not appear that such hired labor can not be employed and paid by the hour rather than by the day, in which case such labor would only receive pay for the actual number of hours of labor rendered, whether it be seven, eight, or ten hours per day. By adopting the system of paying such labor by the hour instead of by the day, no injury will accrue to the laborers as they

will be paid for all overtime at the same rate that they would receive by a per diem wage.

It is claimed by the representatives of the National Grange that not more than one-fourth of the population of the United States are engaged in agricultural pursuits. It must appear to anyone giving the matter any kind of investigation that a very small per cent of the labor upon farms, even during the harvesting period, is performed by hired laborers. Farming is a seasonal avocation. Crops must be planted, cultivated, and gathered with reference to season and weather conditions; therefore, it is practically impossible to have a standard eight-hour day in agricultural pursuits.

It is believed that fully one-half of the people of the United States are engaged in industrial, mercantile, and professional pursuits and live in towns and cities having not less than 2,500 population. The evidence is overwhelming that it is to the very great advantage of all the people thus engaged to have the clock advanced one hour during the long and sultry days of the summer; that it is better from every standpoint that the people of the cities should begin their daily labor one hour earlier in the morning and cease one hour earlier in the afternoon, which can be done under the present standard time provided in the law now sought to be repealed.

If dew upon vegetation early in the morning is sufficient to retard wheat harvesting during the summer months, it is certainly sufficient to prevent the cultivation of gardens and truck patches early in the morning. But the early dews have no effect whatever upon the persons engaged in industrial and mercantile pursuits, and, although so engaged, they can have an extra hour in the afternoon in which to cultivate gardens and truck patches at a time when there is no dew to hinder such work.

As no penalty is provided for the punishment of anyone who does not comply with standard time requirements, there is nothing to prevent the farmers adjusting their

hours of labor wholly with reference to weather and seasonal conditions in so far as the planting, cultivating, and harvesting of their crops is concerned.

Millions of dollars are saved to the people of the towns and cities by the existing law in their coal, gas, and electric light bills, which saving certainly ought to continue as long as war prices continue.

Both the States of New York and Pennsylvania, the two largest in population and industrial resources in the United States, have enacted laws legalizing and harmonizing State standards of time with the Federal time standards; and if the daylight-saving law is repealed it will bring confusion and conflict in these two States which can not be remedied except by acts of their legislatures, which legislatures will not meet in regular session prior to the time the repeal of this act takes effect. Such a condition will bring about confusion and litigation in these great States without any corresponding benefits whatever.

We believe that in the interest of good legislation the daylight-saving law should be given further trial. We believe that wherever inconvenience has resulted from a literal compliance with the terms of the present law it can and will be removed by such adjustments as can and no doubt will be made in the railroad schedules as soon as the railroads are returned to private ownership and operation. But we do not believe such inconveniences as have been presented to your committee justify it in recommending a sweeping repeal of the law without further trial.

We submit herewith as a part of this report a copy of a letter, bearing date of June 2, 1919, addressed to the honorable chairman of this committee by a representative of the daylight-saving committee of the United States Chamber of Commerce, together with an exhibit showing the action or lack of action of the legislatures of such States as have been in session since the beginning of the operation of the daylight-saving law; and also preamble

and resolutions of the Chamber of Commerce of the State of New York adopted June 5, 1919.

We also attach hereto and make a part of this report the report of the Committee on Interstate and Foreign Commerce on said Senate bill 1854, providing for the saving of daylight and other purposes, submitted on February 9, 1918.

SAMUEL E. WINSLOW.	T. W. SIMS.
WALTER R. STINESS.	A. G. DEWALT.
SCHUYLER MERRITT.	CHAS. P. COADY.
J. STANLEY WEBSTER.	A. J. MONTAGUE.
	FRANK E. DOREMUS.

"PANHANDLE ACT."

41 St. L. 1446. Act approved March 4, 1921, transferring portions of Texas and Oklahoma into the Central time zones.

Entitled:

An Act to transfer the Panhandle and Plains Section of Texas and Oklahoma to the United States Standard Central time zone—

(Act of Mar. 4, 1921)

(Sec. 1.) The Interstate Commerce Commission is hereby authorized and directed to issue an order placing the western boundary line of the United States standard central time zone in so far as the same affect Texas and Oklahoma as follows:

Beginning at a point where such western boundary time zone crosses the State boundary line between Kansas and Oklahoma; thence westerly along said state boundary line to the northwest corner of the State of Oklahoma; thence in a southerly direction along the West State boundary line of Oklahoma and the West State boundary line of Texas to the southeastern corner of the State of New Mexico; thence in a westerly direction along the State boundary line between the States of Texas and New Mexico

to the Rio Grande River; thence down the Rio Grande River as the boundary line between the United States and Mexico; *Provided*, That the Chicago, Rock Island and Gulf Railway Company and the Chicago, Rock Island and Pacific Railway Company may use Tucumcari, New Mexico, as the point at which they change from Central to Mountain time and vice versa; the Colorado Southern and Fort Worth and Denver City Railway Companies may use Sixela, New Mexico, as the changing point; the Atchison, Topeka and Sante Fe Railway Company and other branches of the Santa Fe System may use Clovis, New Mexico, as such changing point, and those railways running into or through El Paso may use El Paso as such point. *Provided further*, That this Act shall not, except as herein provided, interfere with the adjustment of time zones as established by the Interstate Commerce Commission.

Sec. 2. (Repeal of Conflicting Laws.) That all laws and parts of laws in conflict herewith are hereby repealed.

66th Congress, 3d Session. } HOUSE OF REPRESENTATIVES. { Report No. 1289.

EXTENSION OF UNITED STATES STANDARD CENTRAL TIME ZONE TO PANHANDLE AND PLAINS SECTION OF TEXAS AND OKLAHOMA.

February 3, 1921.—Referred to the House Calendar and ordered to be printed.

Mr. Rayburn, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany H. R. 14490.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 14490) transferring the

Panhandle and Plains section of Texas and Oklahoma to the United States standard Central time zone, having considered the same, report thereon with a recommendation that it pass.

The effect of this measure would be to transfer the Panhandle and Plains section of Texas and a little strip of Oklahoma lying just north of it from mountain to central time. It affects no one except the people who live in this little strip of west Texas. Prior to the passage of the daylight-saving law this territory had always been in central time and all of the remaining portion of Texas is now in central time. The passage of this act will simply run the west boundary of central time down the western boundary of Texas, instead of cutting a strip off of west Texas and throwing it into mountain time.

The daylight-saving law required that the time zones should be based upon certain meridians. While the daylight-saving law was in the main repealed, yet the part of it referring to time zones was left in force.

The Interstate-Commerce Commission declined to make this transfer on the ground that they did not have that discretion under the law. The purpose of their letter is to show why the law would not permit them to comply with the wishes of the people affected, and they do not offer any objections to the passage of the proposed law.

The people who will be affected seem practically a unit in favor of this legislation. In fact, practically all of the business and commercial organizations and chambers of commerce have unanimously indorsed this measure. In addition, all of the railways which operate in this section seem to favor it. The testimony shows that at mass meetings in various localities the people have not only passed resolutions, but are actually using the central time.

The Legislature of the State of Texas, on January 19, 1921, passed a resolution indorsing this bill.

. . . . . .

This measure will place the entire State in the same time

zone and makes the time uniform. Inasmuch as no other part of the country is affected, there seems to be no objection to the passage of the measure.

RESOLUTION OF THE HOUSE OF REPRESENTATIVES PASSED BY THE HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF THE STATE OF TEXAS, JANUARY 19, 1921.

RELATING TO OFFICIAL TIME ZONE.

Mr. Hill offered the following resolution:

Whereas, The line between what is known as Mountain time and Central time, was prior to January 1, 1919, on or near the western boundary line of the State of Texas, which had continued for many years, and which was entirely satisfactory to the people of that section; and

Whereas, The Interstate Commerce Commission put into effect on the first day of January, 1919, an order which placed the western part of the State of Texas in Mountain time, which was without the consent of the people of that section of the State; and

Whereas, The remainder of the State is in Central time, and thus places the western portion of the State at great disadvantage and inconvenience as to relations with the other parts of the State, and also as to local conditions, all of which is very unsatisfactory to the people of that section of the State; and

Whereas, Many protests have been made to the Interstate Commerce Commission at Washington, all of which have brought about no changes nor any signs or intimations of relief; and

Whereas, The Hon. Marvin Jones has introduced a bill in Congress which would afford the means for the necessary change; now, therefore, be it

Resolved by the House of Representatives, That the

Congress be urged to take such action as will give relief and satisfaction to the people of that section; and be it further

Resolved, That the Chief Clerk of the House be directed to transmit a copy of these resolutions to each of the United States Senators and members of the House of Representatives from Texas, requesting them to use their influence in this behalf; and be it further

Resolved, That a copy of this resolution also be sent, as above provided for, to each member of the Interstate Commerce Commission.

Signed—HILL, BALDWIN.

"IDAHO ACT."

42 St. L. 1434—Act approved March 3, 1923, directing that Southern Idaho be included within the Mountain time zone.

(Standard Time of the United States—Zones—Idaho—new Sec. 3 added to Act of March 19, 1918.)

That an Act entitled "An Act to Save daylight and to provide standard time for the United States", approved March 19, 1918, as amended, be, and the same hereby is, further amended by adding thereto after Section 2 and before Section 4, an additional Section to be known as Section 3 as follows:

"Sec. 3. In the division of territory, and in the definition of the limits of each zone, as herein before provided, so much of the State of Idaho as lies south of Salmon River, traversing the State from east to west near forty five degrees thirty minutes latitude shall be embraced in the third zone."

67th Congress, 1st Session } CALENDAR NO. 156. SENATE { Report No. 143.

STANDARD TIME FOR SOUTHERN IDAHO.

June 21 (calendar day, June 22), 1921.—Ordered to be printed.

Mr. McLean, from the Committee on Interstate Commerce, submitted the following

REPORT.

[To accompany S. 574.]

The Committee on Interstate Commerce, to which was referred the bill (S. 574) to amend an act entitled "An act to save daylight and to provide standard time for the United States," as amended, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The act of March 19, 1918, entitled "An act to save daylight and to provide standard time for the United States," transferred southern Idaho from the mountain to the Pacific zone. Before the enactment of this law zones were arranged by agreement among the railroads of that section, and the people in southern Idaho were satisfied to be placed in the mountain zone.

On May 20, 1918, section 3 of the daylight-saving clause of the act was repealed and an application was immediately filed through the public utilities commission at Boise, Idaho, for a hearing before the Interstate Commerce Commission for modification of the line separating the Pacific and mountain time zones, so as to place southern Idaho in the mountain time zone, where it had always been prior to the passage of the daylight saving law in 1918. A hearing was held by a representative of the commission at Boise on September 3 last, and on November 1 the request was denied.

Your committee, however, is in receipt of a communication from the chairman of the Interstate Commerce Commission, of date June 18, 1921, in which Mr. Clark, chairman of the commission, states that he knows of no opposition to the proposed change in the zone limits on the part of the carriers, and that the proposed transfer is a matter of public policy, as to which the commission do not care to express an opinion.

Mr. H. V. Platt, president of the Oregon Short Line, in a telegram to the author of the bill, of date March 9, 1921, states:

The Oregon Short Line, in common with all communities in Idaho and eastern Oregon, desire time change to be made at Huntington, Oreg., instead of Pocatello, Idaho. We understand the situation thoroughly and the contention of the people is correct. We earnestly desire that time change be made at Huntington for operating reasons.

It is represented to your committee that the proposed change should be made for the following reasons:

1. Pacific time as it applies to Idaho tends to shorten the business day and works a hardship on those engaged in the several lines of business as well as those engaged in agricultural pursuits and in educational work, because of early darkness, thereby generally reducing efficiency.

2. Pacific time has worked an inconvenience to contractors because it prevents their crews from performing a full day's work, as they are required to start later in the morning and shut down earlier in the afternoon due to early darkness.

3. Pacific time works a hardship on the railroads operating in this State and creates a hazard which did not exist under mountain time, in that the change in the time zone requires the operation of trains under both times, and if care is not taken by crews to change from one time to the other, serious accidents through collisions may take place.

As a precedent for this legislation, the committee will call attention to the act approved March 4, 1921, which transferred the Panhandle and Plains section of Texas and Oklahoma to the standard central time zone on the ground that prior to the passage of the daylight saving act this country was in the central zone instead of the mountain zone.

At that time the Interstate Commerce Commission declined to make this transfer on the ground that they did not have the discretion under the law.

ACTS AND RESOLVES OF MASSACHUSETTS

1920

Chap. 280 An Act to restore to the citizens of Massachusetts the benefits of "daylight-saving", so called.

Whereas, It is desirable that the benefits of this act should be enjoyed during the present year, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted, etc., as follows:

Section 1. If this act takes effect upon its passage, the standard time shall, in this commonwealth, be advanced one hour at two o'clock ante-meridian on the last Sunday in April in the current year, otherwise it shall so be advanced at the same hour on the Sunday next following the date when the act takes effect. In either case, at two o'clock ante-meridian on the last Sunday in October in the current year, such standard time shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the commonwealth is situated, the standard official time of which is described as United States eastern time, so that between two o'clock ante-meridian on the day when the

clock is advanced as aforesaid, and the last Sunday in October at two o'clock ante-meridian in the current year, the standard time in this commonwealth shall be one hour in advance of said United States standard eastern time.

Section 2. At two o'clock ante-meridian of the last Sunday in March of each year, beginning with the year nineteen hundred and twenty-one, the standard time in this commonwealth shall be advanced one hour, and at two o'clock ante-meridian of the last Sunday in October of each year the standard time in this commonwealth shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the commonwealth is situated, the standard official time of which is described as United States standard eastern time, so that between the last Sunday of March at two o'clock ante-meridian and the last Sunday in October at two o'clock ante-meridian in each year the standard time in this commonwealth shall be one hour in advance of the United States standard eastern time.

Section 3. In all laws, statutes, orders, decrees, rules and regulations relating to the time of performance of any act by any officer or department of this commonwealth, or of any county, city, town or district thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of this commonwealth, and in all the public schools and other institutions of the commonwealth, or of any county, city, town or district thereof, and in all contracts or choses in action made or to be performed in the commonwealth, it shall be understood and intended that the time shall be United States standard eastern time as changed by this act.

Approved April 9, 1920.

Chap. 145 An Act to shorten the period of daylight saving, so-called.

Whereas, The deferred operation of this act would in part defeat its purpose, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Section ten of chapter four of the General Laws is hereby amended by striking out, in the second and ninth lines, the word "March", and inserting in place thereof the word:—April,—and also by striking out, in the fourth and ninth lines, the word "October", and inserting in place thereof the word:—September,—so as to read as follows:—Section 10. At two o'clock ante-meridian of the last Sunday in April of each year, the standard time in this commonwealth shall be advanced one hour, and at two o'clock ante-meridian of the last Sunday in September of each year the standard time in this commonwealth shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the commonwealth is situated, the standard official time of which is described as United States standard eastern time, so that between the last Sunday of April at two o'clock ante-meridian and the last Sunday in September at two o'clock ante-meridian in each year the standard time in this commonwealth shall be one hour in advance of the United States standard eastern time. And in all laws, statutes, orders, decrees, rules and regulations relating to the time of performance of any act by any county, city, town or district thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the commonwealth, and in all the public schools and in all institutions of the commonwealth, or of

any county, city, town or district thereof, and in all contracts or choses in action made or to be performed in the commonwealth, it shall be understood and intended that the time shall be United States standard eastern time as changed by this section.

Approved March 23, 1921.

JOURNAL OF THE MASSACHUSETTS HOUSE OF REPRESENTATIVES, 1919, B. p. 1079-1080.

Thursday, May 29, 1919.

By Mr. Kneeland of Winchester, for the committee on Rules, on orders offered at the preceding session by Mr. Kneeland and Mr. Feinberg of Boston, that the following order ought to be adopted:—

Whereas, There is attached to an appropriation bill now pending in the Congress of the United States an amendment repealing the daylight saving law, so called, which puts the clock forward one hour from the last Sunday of March until the last Sunday of October; therefore be it

Ordered, That the House of Representatives of the General Court of Massachusetts, believing it to be established by the experience of the past year that the daylight saving law has contributed to the health and efficiency of the people of the United States, hereby protests against any repeal or modification of said law; and be it further

Ordered, That attested copies of this order be sent by the Secretary of the Commonwealth to the presiding officers of both branches of Congress, and to the Senators and representatives in Congress from this Commonwealth.

Considered under a suspension of the rule, on motion of Mr. Kneeland; and adopted.

FIRST CONGRESS—SECOND SESSION—JANUARY 8, 1790.

President Washington, in Annual Message to Congress said: "Uniformity in the currency, weights, and measures of the United States is an object of great importance, and will, I am persuaded, be duly attended to."

SECOND CONGRESS—FIRST SESSION—OCTOBER 25, 1791.

President Washington in his message said:

"A uniformity in the weights and measures of the country is among the important objects submitted to you by the constitution; and, if it can be derived from a standard at once invariable and universal, must be no less honorable to the public councils, than conducive to the public convenience."

JEFFERSON REPORT.

Am. State Papers, 37 Miscellaneous, I, First Congress, 2d Sess. No. 15.

Plan for Establishing Uniformity in the coinage, weights and measures of the United States.

Communicated to the House of Representatives, July 13th, 1790.

Extracts from Report of Thomas Jefferson dated July 4, 1790.

. . . . . .

"To obtain uniformity in measures, weights, and coins, it is necessary to find some measure of invariable length, with which as a standard, they may be compared.

"There exists not in nature, as far as has been hitherto observed, a single subject or species of subject, accessible to man, which presents one constant and uniform dimension."

. . . . . .

"Matter, then, by its mere extension, furnishing nothing invariable, its motion is the only remaining resource.

"The motion of the earth around its axis, though not absolutely uniform and invariable, may be considered as such for every human purpose. It is measured obviously but unequally, by the departure of a given meridian from the sun, and its return to it, constituting a solar day.

"Throwing together the inequalities of solar days, a mean interval, or day, has been found, and divided, by very general consent, into 86,400 equal parts.

"A pendulum, vibrating freely, in small and equal arcs, may be so adjusted in its length as, by its vibrations, to make this division of the earth's motion into 86,400 equal parts, called seconds of mean time.

"Such a pendulum, then, becomes itself a measure of determinate length, to which all others may be referred as a standard . . ."

"A standard of invariable length being thus obtained, we may proceed to identify, by that, the measures, weights and coins of the United States. . . ."

"Measures, weights and coins, thus referred to standards unchangeable in their nature (as is the length of a rod, vibrating seconds, and the weight of a definite mass of rain water,) will themselves be unchangeable. These standards, too, are such as to all persons, in all times and places. . . ."

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES, ARTICLE IX—¶4

"The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians,

not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated

. . . . . .

COMMUNICATION FROM THE FRENCH MINISTER.

Ex. Does.—Third Congress, Second Session.

Extracts from Communication of the Minister of the French Republic, August 2, 1794, to Secretary of State Randolph of the United States on the subject of weights and measures . . .

"The standard of measure and that of weight are divided into decimal parts. This system of division, which is uniform and similar to that of our arithmetical scale, will be established in all kinds of measures—in those of length, superficies, and of capacity, as well as in weights and money, and in short in astronomical, geographical and nautical measures . . ." "In like manner astronomical Clocks divided into decimals have been made. The whole length of the day from one mid-night to the other, is divided into 10 hours; the hour into 100 minutes, and the minute into 100 seconds, which make each day to consist of one hundred thousand seconds instead of 86,400 as formerly computed, so that the new second will be but about 6/7 of the ancient, . . ."

"Several pocket watches have been made according to the decimal division, and in short the division of the year decreed by the National Convention adheres as nearly as possible to this new system."

(NOTE. Three hundred copies of this communication were printed for distribution among the senators.)

JOHN QUINCY ADAMS REPORT.

From Report on Weights and Measures—By John Quincy Adams, Secretary of State (Ex. Papers, No. 109, Sixteenth Congress, Second Session, vol. VIII), February 22, 1821.

The Secretary of State who, by a resolution of the House of Representatives of the 14th of December, 1819, was directed to report to the House "a statement relative to the regulations and standards for weights and measures in the several states, and relative to proceedings in foreign countries, for establishing uniformity in weights and measures, together with such plan for fixing the standard of weights and measures for the United States as he may deem proper for their adoption" respectfully submits to the House the following:

Report:

"The resolution of the House embraces three distinct objects of attention, which it is proposed to consider in the following order:

1. "The proceedings in foreign countries for establishing uniformity in weights and measures.

2. "The regulations and standards for weights and measures in the several states of the Union.

3. "Such propositions relative to the uniformity of weights and measures as may be proper to be adopted in the United States."

. . . . . .

"Measures and weights are the instruments used by man for the comparison of quantities, and proportions of things."

. . . . . .

"With civil society too originates the necessity for common and uniform standards of measures."

. . . . . .

"In this conflict between the dominion of usage and of law, the last and greatest dangers to the principle of uni-

formity proceed from the laws themselves. The legislator having no distinct idea of the uniformity of which the subject is susceptible, not considering how far it should be extended, or where it finds its boundary in the nature of things and of man, enacts laws inadequate for their purpose, inconsistent with one another; sometimes stubbornly resisting, at others weakly yielding to inveterate usages or abuses; and finishes by increasing the diversities which it was his intention to abolish, and by loading his statute book only with the impotence of authority, and the uniformity of confusion."

. . . . . .

"When weights and measures present themselves to the contemplation of the legislator, and call for the interposition of law, the first and most prominent idea which occurs to him is that of *uniformity:* his first object is to embody them into a system, and his first wish, to reduce them to one universal common standard. His purposes are uniformity, permanency, universality; one standard to be the same for all persons and all purposes, and to continue the same forever."

. . . . . .

"Of the origin of weights and measures, no direct mention is made, but the Hebrew Historian, Josephus, asserts that they were invented by Cain, the tiller of the ground, and the first builder of a city. . . ."

"The division of numbers by decimal arithmetic, and the use of the *cubit* as a standard measure of length, are distinctly proved to have been established before the general deluge. The division of time into days, months, and years was settled. The ages of the patriarchs are noted in units, tens, and hundreds of years; and Noah, we are told, built, by divine instruction, his ark three hundred cubits long, fifty cubits broad, and thirty cubits in height."

. . . . . .

"In the *law* given from Sinai—the law, not of a human legislator, but of God—there are two precepts respecting

weights and measures. The first (Leviticus XIX 35, 36) 'Ye shall do no unrighteousness in judgment, in mete yard (measure of length), in weight, or in measure (of capacity). Just balances, just weights, a just ephah, and a just hin, shall ye have.' The second (Deuteronomy XXV 13, 14, 15) 'Thou shalt not have in thy bag divers weights, a great and a small. Thou shalt not have in thy house divers measures, a great and a small. But thou shalt have a perfect and just weight, a perfect and just measure shalt thou have.' The weights and measures are prescribed as already existing and known, and were all probably the same as those of the Egyptians. The first of these injunctions is addressed in the plural to the whole nation, and the second in the singular to every individual. The first has reference to the standards, which were to be kept in the ark of the covenant, or sanctuary; and the second to the copies of them, kept by every family for their own use.

"The first, therefore, only commands that the standards should be just; and that, in all transactions, for which weights and measures might be used, the principle of righteousness should be observed. The second requires, that the copies of the standard used by individuals, should be uniform, not divers; and not only just, but perfect, with reference to the standards."

. . . . . .

"In the vision of the prophet Ezekiel, during the Babylonian captivity—that vision which, under the resurrection of dead bones, shadowed forth the restoration and union of the houses of Ephraim and Judah, with the reproaches of former violence and spoil, injustice and exactions, are mingled the exhortations of future righteousness, particularly with reference to weights and measures; and there is a special command that the measures of capacity, liquid and dry should be the same.

(Ezekiel 45:9, 10, 11) 'Thus saith the Lord God; let it suffice you, O princes of Israel, remove violence and spoil, and execute judgment and justice, take away your exactions

from my people, saith the Lord God. Ye shall have just balances, and a just ephah, and a just bath. The ephah and the bath shall be one measure, that the bath may contain the tenth part of an homer, and the ephah the tenth part of an homer; the measure thereof shall be after the homer. . . .'

. . . . . .

"We see here combined the uniformity of identity, and the uniformity of proportions. . . ."

"The book of Job is the story of a man, supposed not to have been descended from Abraham, and certainly not belonging to any of the tribes of Israel. It has reference to other manners, other customs, opinions, and laws, than those of the Hebrews.

"But it bears evidence of the primitive custom of paying silver by weight, while gold and jewels were valued by tale; and of that system of proportional uniformity, which combines gravity and extension for the mensuration of fluids. Speaking of wisdom, it says, (Ch. XXVIII, 15, 17, 25) 'It cannot be gotten for gold, neither *shall silver be weighed* for the price thereof. The gold and the crystal cannot equal it; and the exchange of it shall not be for jewels of fine gold.' And afterwards, in the same chapter, that 'God maketh the weight for the winds, *and weigheth the waters by measure.*' "

. . . . . .

"Among the nations of Modern Europe there are two (England and France), who, by their genius, their learning, their industry, and their ardent and successful cultivation of the arts and sciences, are scarcely less distinguished than the Hebrews from whom they have received most of their religions, or the Greeks from whom they have derived many of their civil and political institutions. From these two nations the inhabitants of these United States are chiefly descended; and from one of them we have all our existing weights and measures. Both of them, for a series of ages, have been engaged in the pursuit of an

uniform system of weights and measures. To this the wishes of their philanthropists, the hopes of their patriots, the researches of their philosophers, and the energy of their legislators, have been aiming with efforts so stupendous and with perseverance so untiring, that, to any person who shall examine them, it may well be a subject of astonishment to find that they are both yet entangled in the pursuit at this hour and that it may be doubted whether all their latest and greatest exertions have not hitherto tended to increase diversity instead of producing uniformity."

. . . . . .

"Since the establishment of our national independence, we have partaken of that ardent spirit of reform, and that impatient longing for uniformity, which has signally animated the two nations from which we descended. The Congress of the United States has been as earnestly employed in the search of an uniform system of weights and measures as the British Parliament."

. . . . . .

"One of the principal objects of the Great Charter was the establishment of uniformity of weights and measures; but it was a uniformity of *existing* weights and measures; and a uniformity not of identity, but of proportion. The words of the 25th Chapter of the Great Charter of the year 1225 (9 Henry III.) are, in the English translation of the statutes, 'one measure of wine shall be through our realm, and one measure of ale, and one measure of corn, that is to say, the *quarter* of London; and one breadth of dyed cloth, that is to say, two yards (ulne) within the lists; and it shall be of weights as it is of measures.'"

. . . . . .

"The Great Charter, which now appears as the first legislative act of the English statutes at large, is not the Magna Charta extorted by the barons from John, at Runni mead, but a repetition of it by Henry the Third in the year 1225, as confirmed by his son, Edward the First, in the

year 1300. It is properly an act of this last date, though inserted in the book as of 9 Henry III., or 1225."

. . . . . .

". . . In the celebrated statute Staple of 1353 (27 Edward III ch. 10.) is the following provision: . . . 'We therefore will and establish, that *one* weight, *one* measure, and *one* yard, be throughout the land . . .' "

. . . . . .

"By an act of 13 William c. 5. 701, the Winchester bushel had been declared the standard for the measure of grain: . . ."

"No further change in this portion of English legislation has yet been made. But the philosophers and legislators of Britain have never ceased to be occupied upon weights and measures, nor to be stimulated by the passion for uniformity . . ."

"From the year 1757 to 1764, in the years 1789 and 1790, and from the year 1814 to the present time, the British parliament have at three successive periods, instituted inquiries into the condition of their own weights and measures, with a view to the reformation of the system, and to the introduction and establishment of greater uniformity. These inquiries have been pursued with ardor and perseverance, assisted by the skill of their most eminent artists by the learning of their most distinguished philosophers, and by the contemporaneous admirable exertions, in the same cause of uniformity, of their neighboring and rival nation.

"Nor have the people, or the Congress of the United States, been regardless of the subject, since our separation from the British Empire. In their first confederation, these associated states, and in their present national constitution, the people, that is, on the only two occasions upon which the collective voice of this whole Union, in its constituent character, has spoken, the power of fixing the standard of weights and measures throughout the United States has been committed to Congress. . . ."

. . . . . .

"After a succession of more than sixty years of inquiries and experiments, the British parliament have not yet acted in the form of law. After nearly forty *years* of the same years of separate pursuit of the same object, *uniformity*, the Congress of the United States have shown the same cautious deliberation: they have yet authorized no change of the existing law."

. . . . . .

"The system of modern France originated with the French Revolution. It is one of those attempts to improve the condition of human kind, which, should it even be destined ultimately to fail, would, in its failure, deserve little less admiration than in its success . . ."

. . . . . .

"If that universal uniformity, so desirable to human contemplation, be an obtainable perfection, it is now attainable only by the adoption of the French system of metrology, in all its important parts."

. . . . . .

"This system approaches to the ideal perfection of *uniformity* applicable to weights and measures; and whether destined to succeed, or doomed to fail, will shed unfading glory upon the age in which it was conceived, and upon the nation by which its execution was attempted, and has been in part achieved. . . ."

. . . . . .

"But, if man upon earth be an improveable being; if that universal peace, which was the object of our Savior's mission, which is the desire of the philosopher, the longing of the philanthropist, the trembling hope of the Christian, is a blessing to which the futurity of mortal man has a claim of more than mortal promise; if the Spirit of Evil is, before the final Consummation of things, to be cast down from his dominion over men, and bound in chains of a thousand years, the foretaste here of man's eternal felicity;

then this system of common instruments, to accomplish all the changes of social and friendly commerce, will furnish the links of sympathy between the inhabitants of the most distant regions; the metre will surround the globe in use as well as in multiplied extension; and one language of weights and measures will be spoken from the equator to the poles.

"The establishment of this system of metrology forms an era, not only in the history of weights and measures, but in that of human science. Every step in its progress is interesting; . . ."

. . . . . .

"No apology will be deemed necessary by Congress for dwelling upon these details which signalized the establishment of the new French metrical system. The spectacle is at once so rare and so sublime, in which the genius, the science, the skill, and the power of great confederated nations are seen joining hand in hand in the true Spirit of fraternal equality, arriving in concert at one destined stage of improvement in the condition of human kind; that, not to pause for a moment, were it even from occupations not essentially connected with it, to enjoy the contemplation of a scene so honorable to the character and capacities of our species, would argue a want of sensibility to appreciate its worth. This scene formed an epoch in the history of man. It was an example and an admonition to the legislators of every nation, and of all aftertimes . . ."

. . . . . .

"During the violent ebullitions of the most inflammatory period of the French Revolution, it had been imagined that in the reformation of the system of weights and measures, upon the principle of uniformity, the mensuration of time ought to be included."

. . . . . .

"The establishment of the French republic was a new era in the world. It had taken place on the 22 of September,

1792, the day of the autumnal equinox, when the sun entered the sign of the Balance, the Symbol of Equality. Before it the Christian era was to disappear. The new year was to commence with that day. The division of twelve numbers was to be retained; but they were all to be of three times ten or thirty days. The division of weeks of seven days, beginning with one specially devoted to the Worship of the Creator, and repose, was to be abolished; but every tenth day was to be dedicated to some moral abstraction of virtue, such as liberty, equality, fraternity, patriotism, conjugal affection, filial piety, old age, and once a year to the Supreme Creator, whose existence was formally authenticated by a decree of the national convention. After their thirty-six decades, there remained five, and in leap years six complementary days, . . . which were to be all holidays, and in which were to be revived the Olympic games of Ancient Greece."

. . . . . .

"It was established by a law of the 5th of October, 1792, and for a space of twelve years it was the calendar of the French nation. Henceforth it will only be remembered as preparing future problems in chronology . . ."

. . . . . .

"The decimal divisions, and the fanciful contexture of the equinoctial calendar, were a sort of episode to the new system of chronology. The attempt to decimate the year in its number of days was equally useless and absurd. The five successive holidays at the close of the year, just at the season of vintage, with the institution of athletic sport, were a waste of time, and a provocation to mischievous idleness, ill compensated by the retrenchment of sixteen Sundays in the year, at a distance of a week from each other, and devoted to the exercises of piety . . ."

. . . . . .

"Uniformity of weights and measures is, and has been for ages, the common, earnest, and anxious pursuit of

France, of Great Britain, and, since their independent existence, of the United States. To the attainment of one object, common to them all, they have been proceeding by different means, and with different ultimate ends. France alone has proposed a plan suitable to the ends of all; and has invited cooperation for its construction and establishment. . . ."

"To promote the intercourse of nations with each other, the uniformity of their weights and measures is among the most efficacious agencies; and this uniformity can be effected only by mutual understanding and united energy. A single universal system can be finally established only by a general convention, to which the principal nations of the world shall be parties, and to which they shall all give their assent. To effect this would seem to be no difficult achievement. . . ."

"Would it not be strange, if, while mankind find it so easy to attain uniformity in the use of every engine adapted to their mutual destruction, they would find it impracticable to agree upon the few and simple but indispensable instruments of all their intercourse of peace and friendship and beneficence—that they should use the same artillery and musketry, and bayonets and swords and lances, for the wholesale trade of human slaughter, and that they should refuse to weigh by the same pound, to measure by the same rule, to drink from the same cup, to use in fine the same materials, for ministering to the wants and contributing to the enjoyments of one another.

"These views are presented as leading to the conclusion, that, as final and universal uniformity of weights and measures is the common desideratum of all civilized nations . . . it would be worthy of the dignity of the Congress of the United States to consult the opinion of all the civilized nations with whom we have friendly intercourse; to ascertain, with the utmost attainable accuracy, the existing state of their respective weights and measures; to take up and pursue, with steady persevering, but always temperate and

discreet exertions, the idea conceived and thus far executed, by France, and to cooperate with her to the final and universal establishment of her system."

"But, although it is respectfully proposed that Congress should immediately sanction the consultation, and that it should commence in the first instance with Great Britain and France, it is not expected that it will be attended with immediate success. Ardent as the pursuit of uniformity has been for ages in England, the idea of extending it beyond the British dominions has hitherto received but little countenance there. The operation of changes of opinion there is slow; the aversion to all innovation, deep. More than two hundred years had elapsed from the Gregorian reformation of the Calendar, before it was adopted in England. It is to this day still rejected throughout the Russian Empire. It is not even intended to propose the adoption by ourselves of the French metrology, for the present. The reasons have been given for believing, that the time is not yet matured for this reformation. Much less is it supposed advisable to propose its adoption to any other nation. But, in consulting them, it will be proper to let them understand, that the design and motive of opening the communication is, to promote the final establishment of a system of weights and measures, to be common to all civilized nations."

. . . . . .

". . . it may be proper to state the extent of what can be done by Congress. Their authority to act is comprised in one line of the constitution, being the fifth paragraph of the eighth section of the first article; in the following words: '*to fix the standards of weights and measures*' . . ."

. . . . . .

"At the adoption of the constitution all the weights and measures in common use throughout the United States were derived, either by the statutes of the states, or invariable

usage, which had supplied the place of law, from the standards in the English exchequer."

. . . . . .

"In many of the states the standards established by statute had been procured from the court of the exchequer; and the only variety discernable in the legislation of the states on this subject, arises from a difference in the several standards of the same measures at the exchequer, and at Guildhall in London."

. . . . . .

"Weights and measures may be ranked among the necessaries of life, to every individual of human society. They enter into the economical arrangements and daily concerns of every family. They are necessary to every occupation of human industry; to the distribution and security of every species of property; to every transaction of trade and commerce; to the labors of the husbandmen; to the ingenuity of the artificers; to the studies of the philosopher; to the researches of the antiquarian; to the navigation of the mariner, and the marches of the soldier; to all the exchanges of peace, and all the operations of war. The knowledge of them, as in established use, is among the first elements of education, and is often learnt by those who learn nothing else, not even to read and write. This knowledge is riveted in the memory by the habitual application of it to the employments of men throughout life. Every individual, or at least every family has the weights and measures used in the vicinity, and recognized by the custom of the place. To change all this at once, is to affect the well being of every man, woman and child, in the community. It enters every house, it cripples every hand. No legislator can attempt it with any prospect of success, or any regard to justice, but upon two indispensable conditions: one, that he shall furnish every individual citizen easy access to the new standards which take the place of the old ones; and the other, that he shall enable him to

know the exact proportion between the old and the new. . . ."

. . . . . .

"The means of execution for exacting and obtaining the conformity of individuals to the ordinances of the law, in the case of weights and measures, belong to that class of powers which, in our complicated political organization, are reserved to the separate states. The jurisdiction to which resort must be had for transgression of this description of laws, are those of municipal police. In England they were originally of the resort of views of frank pledge in every separate manor, and have since been transferred to the clerks of the market and to justices of the peace. The sealers of weights and measures, officers who have the custody of the standards, and the authority to compare with them, from time to time, the weights and measures used by individuals, and to prosecute for all offenses by variation from the standards, and the courts before whom all such offenses are triable, are institutions not only existing in almost every state in the Union, but essentially belonging to that portion of public authority suited to the state administration rather than to that of the Union. It is a general principle of our constitutions, that, with every delegation of legislative authority, a co-extensive power of execution has been granted. Affairs of municipal and domestic concern have, for obvious reasons, been reserved to the state authorities; and of this character are most of the regulations and penal sanction for securing conformity to the standards of weights and measures. *In fixing the standard*, it is believed that Congress must rely almost entirely, if not altogether, upon state executive authorities, for carrying their law into execution. And, although this reliance may be safely indulged in relative to a law which should merely fix the uniformity of existing standards, its efficacy would be very questionable in case of a law of very great and universal innovation upon the habits and usages of the people."

. . . . . .

"These national standards being thus made and deposited, exact copies of them should be made of the same materials . . . and these copies should be transmitted to the executives of every state in the Union."

. . . . . .

"It is scarcely possible that any law of the United States to establish uniformity of weights and measures throughout the Union, should be made effectual, without the cordial aid and co-operation of the state legislature and executive authorities."

. . . . . .

"In relation to weights and measures throughout the Union, we possess already so near an approximation to uniformity of law, that little more is required of Congress for fixing the standard than to provide for the uniformity of fact, by procuring and distributing to the executives of the states and territories positive national standards conformable to the law. If there is one conclusion more clear than another, deducible from all the history of mankind, it is the danger of hasty and inconsiderate legislation upon weights and measures. From this conviction, the result of all inquiry is, that, while all existing systems of metrology are very imperfect, and susceptible of improvements involving in no small degree the virtue and happiness of future ages; while the impression of this truth is profoundly and almost universally felt by the wise and the powerful of the most enlightened nations of the globe; while the spirit of improvement is operating with ardor, perseverance, and zeal honorable to the human character, it is yet certain, that, for the successful termination of all these labors, and the final accomplishment of the glorious object, permanent and universal uniformity, legislation is not alone competent. A concurrence of will is indispensable to give efficacy to the precepts of power. All trifling and partial attempts of change in our existing system, it is hoped,

will be steadily discountenanced and rejected by Congress; not only as unworthy of the high and solemn importance of the subject, but as impracticable to the purpose of uniformity, and as inevitably tending to the reverse, to increased diversity, to inextricable confusion. *Uniformity* of weights and measures, permanent, universal uniformity, adapted to the nature of things, to the physical organization and to the moral improvement of man, would be a blessing of such transcendant magnitude, that, if there existed upon earth a combination of power and will, adequate to accomplish the result by a single act, the being who should exercise it would be among the greatest benefactors of the human race.

. . . . . .

"France first surveyed the subject of weights and measures in all its extent and all its compass. France first beheld it as involving the interests, the comforts, and the morals, of all nations and of all after ages. In forming her system, she acted as the representative of the whole human race, present and to come. She has established it by law within her own territories; and she has offered it as a benefaction to the acceptance of all other nations. That it is worthy of their acceptance, is believed to be beyond a question. But *opinion* is the queen of the world; and the final prevalence of this system beyond the boundaries of France's power must await the time when the example of its benefits, long and practically enjoyed, shall acquire that ascendency over the opinions of other nations which give motion to the springs and direction to the wheels of power.

Respectfully submitted

JOHN QUINCY ADAMS

Department of State,
February 22, 1821."

ACT OF APRIL 2, 1792.

Second Congress, St. L. vol. I, sess. I, sec. 20, c. 16, St. L. 250.

And be it further enacted, That the money of account of the United States shall be expressed in dollars or units, dismes or tenths, cents or hundredths, and milles or thousandths, a disme being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thousandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation.

Approved April 2, 1792.

HISTORICAL WRITINGS OF JOHN FISKE

Vol. VII. The Critical Period of American History, p. 196 . . .

"Whiskey in North Carolina, tobacco in Virginia, did duty as measures of value; and Isaiah Thomas, editor of the Worcester 'Spy,' announced that he would receive subscriptions for his paper in salt pork."

. . . . . .

"Until 1785 no national coinage was established, and none was issued until 1793. English, French, Spanish, and German coins, of various and uncertain value, passed from hand to hand. Besides ninepences and four-ha'-pennies, there were bits and half bits, pistareens, picayunes, and fips. Of gold pieces there were the johannes, or joe, the doubloon, the moidore and pistole, with English and French guineas, carolins, ducats, and chequins. Of coppers there were English pence and halfpence and French sous; and pennies were issued at local mints in Vermont, Massachusetts, Connecticut, New Jersey and Pennsylvania. The English shilling had everywhere degenerated in value, but differently in different localities; and among silver pieces the Spanish dollar, from Louisiana and Cuba, had begun to

supersede it as a measure of value. In New England the shilling had sunk to one sixth of a dollar; in New York to one eighth; in North Carolina to one tenth. It was partly for this reason in devising a national coinage the more uniform dollar was adopted as the unit. At the same time the decimal system of division was adopted instead of the cumbrous English system, and the result was our present admirably simple currency, which we owe to Gouverneur Morris, aided as to some points by Thomas Jefferson. During the period of the Confederation, the chaotic state of the currency was a serious obstacle to trade, and it afforded endless opportunities for fraud and extortion. Clipping and counterfeiting were carried on to such an extent that every moderately cautious person, in taking payment in hard cash, felt it necessary to keep a small pair of scales beside him and carefully weigh each coin, after narrowly scrutinizing its stamp and deciphering its legend."

JOINT RESOLUTION OF JUNE 14, 1836.

24th Congress, sess. I, Res. 7.

A Resolution providing for the distribution of weights and measures.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is directed to cause a complete set of all the weights and measures adopted as standards, and now either made or in progress of manufacture for the use of the several custom-houses, and for other purposes, to be delivered to the Governor of each State in the Union, or such person as he may appoint, for the use of the States respectively, to the end that an uniform standard of weights and measures may be established throughout the United States.

Approved, June 14, 1836.

24th Congress
1st Session.

[REP. NO. 449.]

Ho. of Reps.

WEIGHTS AND MEASURES

March 21, 1836.

Read, and committed to a Committee of the Whole House to-morrow.

Mr. Pinckney, from the Committee on Commerce, submitted the following

REPORT:

The Committee on Commerce, to which was referred a resolution directing them to inquire into the expediency of providing for the distribution amongst the States and Territories of the same standards of weights and measures, which have been ordered to be provided for the custom-houses, respectfully ask leave to report as follows:

Congress is expressly authorized by the constitution to establish uniformity in weights and measures. The words of that instrument are, (in the 5th clause of section 8) that Congress shall have power "to coin money, regulate the value thereof, and of foreign coin, and to fix the standard of weights and measures." There can be no doubt, therefore, of its perfect constitutional competency to execute the object contemplated by the resolution.

The attention of Congress had been repeatedly invited to this subject, under different administrations, and various measures have, from time to time, been adopted with a view to the production of accurate standards, and a uniform result. As far back as 1790, General Washington earnestly recommended "uniformity in weights and measures, as an object of great importance," and the Senate of the United States, of that year, resolved that it should receive the careful attention to which it was entitled. In 1791 a committee was appointed, and in 1792, a report was

presented, bottomed upon the great general principle, that if uniformity can be derived from a standard at once invariable and universal, it would be equally honorable to the public councils, and conducive to the public welfare. Various other reports were subsequently prepared, exhibiting a full system of weights and measures, and accompanied by bills, based upon the mean of the weights and measures then in use, until the year 1800. From that period no action whatever appears to have taken place by Congress upon this important subject, until the year 1817, when the Secretary of State was directed, by a resolution of the Senate, to present "a statement relative to the regulations and standards for weights and measures in the several States, and relative to proceedings in foreign countries, for establishing uniformity in weights and measures, together with such propositions as may be proper to be adopted in the United States." In compliance with that resolution, a luminous and scientific report (well remembered by the whole country) was prepared by the Secretary, (the Hon. John Quincy Adams) and submitted to Congress, under date of 22d of February, 1821. On the 11th of March, 1822, a committee reported upon the report of Mr. Adams, proposing *the fixation* of the standards "to what would appear to have been the intention of those found in the country, and to render stable and uniform the measures and weights we at present possess." Standard units were thereupon procured from England and deposited in the State Department. In 1828, the troy pound of the mint, procured from England by Mr. Gallatin, and standarded by Captain Kater, was declared standard of weights of the country, from which all others should be made by the legal (English) ratios. In May, 1830, the Secretary of the Treasury was requested, by a resolution of the Senate, to cause a comparison to be made of the weights and measures of the custom-houses. The execution of this duty was assigned by the Department to Mr. Hassler, who immediately entered upon that important task. The results of his investi-

gations are contained in the reports of the Treasury Department of the 20th and 30th of June, 1832. According to a joint resolution of Congress of 1834, the Secretary of the Treasury organized an establishment for the construction of standard weights and measures, which is now in full and successful operation, and where standards are constructing upon the principles which have evidently prevailed at all times when this subject was before Congress for their consideration or decision.

The proposition now is that standards shall be constructed for the States and Territories, at the same establishment at which they are now making for the custom-houses.

Your committee are of opinion that the adoption of such a measure would be highly useful and advantageous to the country. It is a proper and natural extension of the system that has been pursued, to establish uniformity, in relation to the collection of the Federal revenue. Many and serious inconveniences have arisen from the diversity existing in relation to weights and measures, between the different States and Territories of the Union. It is highly desirable that these evils should be remedied, and that uniformity should be established upon a subject so important to the country and to the general interests of commerce. It is understood that several of the State Legislatures are desirous to procure a new standard of weights and measures. Application for this purpose has been made, particularly by a committee of the Legislature of New York to the Secretary of the Treasury. That officer, however, declined giving any direction on the subject, referring the applicants to Congress as the only competent authority: but, in his reply to the committee, he expresses his decided approbation of the object, and hopes that provision will be made by Congress for furnishing standards to the several States.

Your committee, therefore, recommend the adoption of the following resolution:

Resolved, That the Secretary of the Treasury be, and he is hereby, authorized and directed, to cause standard weights and measures to be made and furnished to each of the States and Territories of the Union; such weights and measures to be made to conform to the standard selected and adopted by the Executive for the weights and measures to be used in collecting the revenue of the United States; and to be made at the same establishment in which weights and measures are now making for the custom houses.

ACT OF CONGRESS, APPROVED JULY 7, 1838.

27th Congress, sess. II, c. 169, sec. 7.

And be it further enacted, That the Secretary of the Treasury cause to be made, under the superintendence of Mr. Hassler, one Standard balance for each state, and when completed that he cause them to be delivered to the respective Governors for the use of the respective States.

ACT OF JULY 28, 1866, C. 301, 14 ST. L. 339.

Sec. 3569. (Use of the metric system authorized.) It shall be lawful throughout the United States of America to employ the weights and measures of the metric system; and no contract or dealing, or pleading in any court, shall be deemed invalid or liable to objection because the weights or measures expressed or referred to therein are weights or measures of the metric system.

JOINT RESOLUTION OF JULY 27, 1866.

No. 93—*Joint Resolution to enable the Secretary of the Treasury to furnish to each State one set of the Standard Weights and Measures of the Metric System.*

Be it resolved by the Senate and House of Representatives of the United States in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized

and directed to furnish to each State to be delivered to the governor thereof, one set of the standard weights and measures of the metric system for the use of the States respectively.

Approved July 27, 1866.

ACTS OF THE SEVERAL STATES RECOGNIZING SUPREMACY OF FEDERAL STANDARDS.

Alabama, Pol. Code, c. 47, Weights and Measures.

Sec. 2429. Must conform to standard established by Congress. There is but one standard of measure of length and surface, one of weight, and one of capacity, throughout this state, which must be in conformity with the standard of measure of length, surface, weight, and capacity established by Congress.

Sec. 2438. Standard balances, by whom kept. The set of balances intended for the adjustment of weights and measures, furnished to this state by Act of Congress, must be kept by the Secretary of State.

Arizona, Rev. Stats. (Civil Code), title LVI, Weights and Measures.

Sec. 5510. The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the national bureau of standards, shall be the state standards by which all municipal standards of weights and measures shall be tried, proved and sealed.

Digest of the Statutes of *Arkansas* (1921), c. 184, Weights and Measures.

Sec. 10,475. Standard set. The set of weights and measures prepared by the United States under the act of Congress, approved the fourteenth day of June A. D. 1836, and delivered to the Governor of the State of Arkansas, and now deposited in the office of the Secretary of State, shall be and the same is hereby declared to be the standard of all weights and measures used in this state.

California, Gen. Laws (1923), pt. II, art. 9204.

Sec. 5. Standards of weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or renewal thereof, and such as shall be procured by the state in conformity therewith and certified by the national bureau of standards, shall be the state standards by which all state, county and municipal standards of weights and measures shall be tried, proved and sealed.

Colorado, Comp. Laws (1921), c. LXXI, Weights and Measures.

Sec. 4109. When United States weights and measures accepted. Sec. 1. That the weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, shall be deemed the lawful standard of weights and measures of the people of this state.

Connecticut, Gen. Stats. (1918), vol. I, c. 121.

Sec. 2304. Standard of Weights and Measures. The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from

the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the national bureau of standards, shall be the state standards, by which all county and municipal standards of weights and measures shall be tried, proved and sealed.

Delaware, Rev. Code (1915), c. 82, Weights and Measures.

Sec. 2915—Sect. 1. Standard Weights and Measures; of what Consist for This State:—The Standard weights and measures of the United States, now deposited in the custody and office of the State Chemist, are the true and legal standards for this State; and the duplicate thereof, deposited with the several Prothonotaries, are true duplicate standards by which all weights and measures, used within this State, shall be tried and regulated.

Florida.

(No mention of United States Standards, but does not undertake to define avoirdupois or troy weights, or linear or surface measures and provides for a gallon in accordance with the United States standard.)

Georgia, Code, vol. I (1911), art. 4, c. 4.

Sec. 1881. Seal or Stamp for marking weights and measures. The ordinaries must procure for their respective counties a marking instrument, seal or stamp, for the purpose of marking all weights and measures which they may find not to weigh or measure less than the standard established by the Congress of the United States, which is the standard of this State.

Idaho, Comp. Stats. (1919), vol. I, title 20, art. 2.

Sec. 2561. State Standards. Such standard weights and measures as have been furnished to this state by the govern-

ment of the United States, in accordance with the joint resolution of Congress, approved June 17, 1836, and such weights, measures, balances and measuring devices as may be received from the United States as standard weights, measures, balances and measuring devices, in addition thereto or in renewal thereof, shall be the authorized standards of the state of Idaho.

Illinois, Rev. Stats. (1917), c. 147, Weights and Measures.

Sec. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That the weights and measures received from the United States, and now in charge of the Secretary of State, to wit: . . . together with the three sets of balances received from the United States, shall be and remain, and be used as the sole authorized public standard of weights and measures, to which shall be added such new weights, measures, balances and other apparatus as may be received from the United States as standard weights, measures, balances and apparatus in addition thereto or in renewal thereof, as well as such weights, measures, balances, and apparatus as may be added by the Secretary of the State and verified by the National Bureau of Standards.

Indiana, Burns, Ann. Ind. Stats., vol. IV, c. 133, Weights and Measures.

Sec. 10525 a. Standard of Weights and Measures.—1. That the standard weights and measures furnished by the government of the United States in accordance with the joint resolution of Congress approved June fourteenth, 1836, and any addition thereto and renewals thereof certified to by the United States bureau of standards and weights, measures, balances and apparatus as may be added by the state commissioner of weights and measures and verified by the United States bureau of standards, shall be

the standards by which all state, county and city standards shall be tried, proved and sealed.

Code of *Iowa* (1924), c. 161, Standard Weights and Measures.

Sec. 3227. Standard established. The weights and measures which have been presented by the department to the federal bureau of standards and approved, standardized, and certified by said bureau in accordance with the laws of the Congress of the United States shall be the standard weights and measures throughout the State.

Kansas, Rev. Stats. (1923), c. 83.

Sec. 101. Standards. Such standard weights and measures as have been furnished to this state by the government of the United States, in accordance with a joint resolution of Congress, approved June 14, 1836, and such weights, measures, balances and measuring devices as may be received from the United States as standard weights, measures, balances and measuring devices, in addition thereto, or in renewal thereof, shall be the authorized standards of the state of Kansas.

Kentucky, Carroll's Kentucky Stats. (6th ed. 1922).

Sec. 4815. Standard established by United States government.—The weights, measures and balances received from the government of the United States, now in custody of the secretary of state, shall continue in the custody of that officer, and shall be the standard of weights and measures in this state.

Louisiana, Marr's Ann. Rev. Stats. vol. III.

Sec. 7115. Governor to Procure Standard Sets of weights and Measures.—The Governor, at the expense of the State, shall procure, or cause to be procured, for the use and

guidance, in the City of New Orleans, of the Inspector of Weights and Measures hereinafter provided for, two complete sets of copper weights to correspond with weights of their denominations used by the revenue officers of the United States in their offices; together with scales for such weights, and stamps and seals, with such device as the Governor may deem proper; and also two complete sets of measures, calculated for dry, liquid, and long measures, of the same capacity and length as those of their like denomination used by such revenue officers; one of which sets of weights and measures, together with the scales and stamps, shall be deposited in the office of the Secretary of State to serve as a general standard of weights and measures in this State; provided that in the event the equipment hereinafter prescribed now in the possession of the State is in good condition it may be used and the Governor relieved of the necessity of providing the new equipment herein authorized.

Maine, Rev. Stats. (1916), c. 48.

Sec. 1. . . . The standard weights and measures furnished by the government of the United States in accordance with the joint resolution of Congress approved June 14th, 1836, and any additions thereto and renewals thereof certified to by the United States bureau of Standards, and weights, measures, balances and apparatus added by the state sealer of weights and measures and verified by the United States bureau of Standards, shall be the standards of weights and measures throughout this state.

Maryland, Pub. Gen. Laws, vol. II, art. 97.

Sec. 1. The standards for weights and measures in this State, except as otherwise provided in this article, shall be such as are used at the custom house in the city of Baltimore.

Massachusetts, Gen. Laws, c. 98.

Section 3.

. . . . . .

Such standards shall be kept by the director, and he shall, at least once in five years, cause them to be compared with the standards of the United States government, and, if necessary, corrected to agree herewith.

Section 4. The state standards shall also include all weighing and measuring devices received from the United States under the resolution of congress approved June 14, 1836, and all other weighing and measuring devices received from the United States as standard weights and measures, and such as have been or shall be supplied by the commonwealth and certified by the national bureau of standards. . . .

Michigan, Comp. Laws, vol. II, c. 120.

Sec. 1 (6234). The weights and measures received from the United States under a resolution of Congress approved June 14th, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith certified by the national bureau of standards, shall be the state standards, by which all county and municipal standards of weights and measures shall be tried, proved and sealed.

Minnesota, Gen. Stats. (1913), c. 50.

Sec. 5788. State treasurer to keep standards.—The state treasurer shall keep weights, measures and scales which shall conform to the standards established by law, and shall test thereby all weights, measures, and scales prescribed to him by any county sealer, and, when he finds them accurate, shall stamp upon them, with a seal kept for that purpose, the letters "Minn." (2722).

Mississippi Code of 1906, c. 150.

Sec. 5065 (4477). Standards established by Congress.—The standards established by Congress are the standards of the weights and measures in this state;

. . . . . .

Missouri, Rev. Stats. (1919).

Sec. 13377. County Clerk to procure weights and measures. (No statement as to source from which they shall be obtained, but where specifications are made as to contents all appear to correspond with United States standards.)

Montana, Rev. Codes (1921), c. 275.

Sec. 4212. The weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, are the lawful standard weights and measures of the state.

Nebraska, Rev. Stats. (1913), c. 77, sec. 7514.

Sec. 1. Standard weights and measures.—Such standard weights and measures as have been furnished to this state by the government of the United States, in accordance with a joint resolution of Congress, approved June 14, 1836, and such weights, measures, balances and measuring devices as may be received from the United States as standard weights, measures, balances and measuring devices, in addition thereto, or in renewal thereof, shall be the authorized standards of the State of Nebraska.

Nevada, Rev. Laws (1912), vol. I, sec. 4792, Standard of Weights and Measures adopted.

Sec. 1. The standard weights and measures as have been adopted by the government of the United States of America, and such weights, measures, balances and measuring devices as heretofore have been, or hereafter may be,

furnished this state by the United States, as standard weights, measures, balances and measuring devices, shall be the legal standard of weights and measures throughout the State of Nevada. This section shall not prevent the use of the weights and measures of the metric system, authorized by Congress of the United States, as it appears in the Revised Statutes of the United States.

New Hampshire, Public Laws, c. 161.

Sec. 1. The weights and measures received from the United States under joint resolution of congress approved June 14, 1836, and July 27, 1866, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the National Bureau of Standards, shall be the state standards, by which all municipal standards of weights and measures shall be tried, proved and sealed.

New Jersey, Comp. Stats., vol. IV (1909-1910), p. 5847.

Sec. 1. Standard weights and measures—weights, measures and balances which have been or may hereafter be received from Congress approved June 14, 1836, and such new weights, measures and balances as shall be received from the United States as standard weights, measures and balances in addition thereto or in renewal thereof, shall be the authorized standards by which all county municipal standards of weights and measures in this state shall be tried, proved and sealed.

New Mexico, Comp. Laws (1897), Title XXXXII, c. I.

Sec. 4185. The weights and measures, as adopted by the United States government, and at present in use for the purposes of said government, be and the same are hereby

adopted and established as the legal weights and measures of the Territory of New Mexico.

New York, Gen. Business Law, art. II.

Sec. 2. Description of weights and measures—The standard weights and measures that were furnished to this state by the government of the United States, in accordance with a joint resolution of Congress, approved June 14, 1836, . . . and such new weights, measures, balances and other apparatus as may be received from the United States as standard weights, measures, balances and apparatus in addition thereto or in renewal thereof as well as such weights, measures, balances and apparatus as may be added by the state department of weights and measures and verified by the national bureau of standards shall be the standards of weights and measures throughout this state.

North Carolina, Pell's Revisal (1908), vol. II, c. 77.

Sec. 3063. No trader or other person shall buy or sell, or otherwise use in trading, any other weights and measures than are made and used according to the standard prescribed by the congress of the United States, . . .

North Dakota, Rev. Codes (1905), Pol. Art. 39.

Sec. 2184. Standard of weights and measures. The standard of weights and measures shall be the standard adopted by the government of the United States. . . .

Ohio, Gen. Code (Rev. ed.), vol. II, c. 32.

Sec. 6403. The standard weights and measures furnished this state by the secretary of the treasury of the United States under a resolution of Congress, approved June 14, 1836, shall be the legal standard of weights and measures throughout the state. This chapter shall not prevent the use of the weights and measures of the metric system,

authorized by congress of the United States, as it appears in the revised statutes of the United States.

Oklahoma, Comp. Stats. Gen. Laws, vol. II, c. 92, art. II.

Sec. 11195. Standards and Methods.—Federal Standards. The Board of Control shall have charge of the various standards of weights, measures and testing devices received by the State of Oklahoma from the United States under a resolution of Congress, approved June 14, 1836, and July 27, 1866, and such additional standards as may or shall be received from the United States in the future. . . .

The Board of Control shall maintain the standards in good order and shall submit a set of standards, called the primary standards, at proper intervals, to the National Bureau of Standards for certification.

Oregon, Laws, vol. II, title XLII, c. X.

Sec. 8090. State Standards. The standards in possession of the state sealer of weights and measures obtained through and passed upon by the national bureau of standards of the United States shall be at least once in ten years tested by the national bureau of standards, and such standards shall be known and recognized as the state standards of Oregon.

Pennsylvania Stats. (1920).

Sec. 21536. Disposition of United States positive standards.—The original standards of weights and measures furnished by the United States, and now in the office of the secretary of the commonwealth, shall remain in the case provided for that purpose, which shall only be opened under the direction of the governor or the said secretary, for the sole purpose of comparing such standards with the copies hereinafter described . . .

Rhode Island, Gen. Laws (1923), c. 221 (2947).

Sec. 1. The weights, measures and balances received from the United States, and now in the custody of the state sealer, and such new weights, measures and balances as shall be received from the United States as standard weights, measures and balances in addition thereto or in renewal thereof, shall be the authorized standards by which all town standards of weights and measures shall be proved and sealed.

South Carolina, Code (1912), vol. I, c. XXXVI.

Sec. 2466. To be regulated by United States Standard.—Weights and measures shall be regulated by the standard fixed by the Congress of the United States.

So. Dakota, Rev. Code (1919), vol. II, c. 8, art. III.

Sec. 10387. Standard weights and measures to be furnished. Every municipal corporation shall furnish to each public weigher and measurer, so appointed, a set of weights and measures of the United States standard, to be under his exclusive control.

Tennessee, Am. Code, vol. III (1917).

Sec. 3474—(1936) 2685. Standard of Weights and Measures. The standard of weights and measures in this state shall be the same as those adopted by the government of the United States, in accordance with the joint resolution of congress, approved June 24, 1836, copies of which are in the care of the superintendent of weights and measures, in the capital; . . .

Texas, Rev. Civil Stats. (1925), vol. II, c. VII, art. 5730.

Legal standards.—The standard of weights and measures adopted and used by the Government of the United States

is hereby declared the legal standard of weights and measures of this State; . . .

Utah, Comp. Laws (1917), title 115.

Sec. 6276 (2724) United States Standard adopted. The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith, and certified by the national bureau of standards, shall be the state standards of weights and measures.

Vermont, Gen. Laws (1917), c. 246.

Sec. 5868. United States standard adopted. The standards of weight and measure that have been or may be adopted by the United States shall be the standards of weight and measure for this state; and the weights, measures and balances received from the United States under resolution of Congress, approved June 14th, 1836, and such new weights, measures and balances as shall be received from the United States in addition thereto or in renewal thereof, shall be the authorized standards by which all standards of weights and measures of this state shall be tried, proved and sealed.

Sec. 5872 (Commissioner to submit standards once in ten years to National Bureau of Standards for certification).

Virginia, Code (1904), c. 86.

Sec. 1907. Standard weights and measures; where and by whom kept.

The weights, measures and balances received by this state, under a resolution of congress approved the 14th day of June, 1836, and an act of congress approved the 7th day of July, 1838, shall be kept in the capital in a room to be

assigned by the governor and fitted up for the purpose under his direction; they shall be the public standards of weights and measures in this state.

Washington, Comp. Stats. (1922), vol. III, title LXXXV.

Sec. 11603 (9511-1). National and State Standards. The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the National Bureau of Standards, shall be the state standards, by which all county and municipal standards of weights and measures, shall be tried, approved and sealed.

West Virginia, Code (1916), c. 59.

Sec. 1. Standards. The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the national bureau of standards, shall be the state standards of weights and measures. . . .

Wisconsin, Stats. vol. I (1925), c. 125.

Sec. 125.01. Public standards. The weights and measures and the scales and beams, received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures and scales and beams in addition thereto or in renewal thereof, and such as shall be made under the direction of the new state superintendent of weights and measures in conformity therewith,

and certified to by the national bureau of standards shall be the state standards.

Wyoming, Comp. Stats. (1910), c. 209.

Sec. 3139. Standard adopted. The weights and measures and balances as adopted by the United States government, and at present in use by said government, or as may be changed and altered at any time by said government are hereby adopted and established as the legal public standard weights, measures and balances of this state.

. . . . . .

SIR SANDFORD FLEMING ESTABLISHED THE SCIENTIFIC BASIS FOR ALL TIME STANDARDS.

In a scientific discussion following his original proposals made in 1879 for time regulation and measurement before the International Geographical Congress at Venice on September 21, 1881, by Mr. Sandford Fleming (later Sir Sandford Fleming) upon: "The Adoption of a Prime Meridian to be Common to All Nations. The establishment of Standard Meridians for the Regulation of Time," he again laid down the principles which govern our present United States Standard Time Act and our Massachusetts Daylight Saving Act, and in part he said:

(p. 5.) "I propose to direct your attention to arguments which spring from the relations of time and longitude and the rapidly increasing necessity in this age for reform in time reckoning."

"If we take into view the whole earth, we have at the same instant in absolute time, noon, midnight, sunrise, sunset, and all intermediate gradations of the day."

. . . . . .

"Under our present system of notation, confusion is developed, and all count of time is thrown into disorder."

"The local day begins twelve hours before and ends twelve hours after the sun passes the meridian of a place."

. . . . . .

"As a consequence, a day is always beginning somewhere and always ending somewhere. Each spot around the circumference of the sphere has its own day, and therefore there are during every diurnal revolution of the earth, an infinite number of local days, all beginning within the space of twenty four hours, and each continuing twenty four hours. These days overlap each other, and, theoretically, they are as perfectly distinct as they are infinite in number. There are no simultaneous days except on the same meridian, and as the different days are always in the various stages of advancement, difficulties must necessarily arise in assigning the period when an event takes place."

. . . . . .

(p. 8.) "An event occurring any one day may on the instant be announced somewhere the previous day, or somewhere else the following day. About the period when a month or year passes into another month or year an occurrence may actually take place in two different months, or in two different years, according to local reckoning.

"It will be readily conceded that this system is extremely unscientific; that it possesses all the elements of confusion, and produces a degree of ambiguity which cannot be tolerated; that as time rolls on it will lead to grave complications in social and commercial affairs; that it will produce serious errors in chronology; that it will lead to litigation and result generally in difficulties of various kinds. According to our present system there can be no absolute certainty with regard to time unless the precise geographical position be specified as an important element of the date. It is evident that it will be exceedingly inconvenient and troublesome when rapid intercourse becomes universal to bring the times of different countries and localities into agreement; and that the necessity for doing so by additions

and deductions for differences in longitude, will undoubtedly clog the ordinary business of the world.

"It is proposed to obviate the difficulty by a system of cosmopolitan time reckoning, the chief peculiarity of which is the adoption of one particular meridian as a standard time zero, and by an extremely simple arrangement regulating the times at all places on the globe by a direct reference to the common standard. . . ."

. . . . . .

(p. 7.) "The gigantic system of railways and telegraphs which have been established in America has developed social and commercial conditions which never previously existed in the history of the human race. These conditions have affected the relations of time and distance, in a manner which shows, that the system of notation which we have inherited is defective; that it leads to confusion, causes loss of time, and disturbs the arrangements of travelers and business men; that it frequently results in loss of life and leads to difficulties of various kinds; that under the circumstances which have followed the extensive employment of steam and electricity as means of rapid communication, it is generally inappropriate.

"This question has therefore become a matter of great public importance, and attention is seriously directed to the simplest means of removing an impediment to commerce and general intercourse.

"The system which we follow and which has been followed for ages was quite unobjectionable half a century ago, when the electric telegraph was unknown and the horse was almost the only locomotive. The system is based on the theory that time is regulated everywhere by the passage of the sun over the meridian of each separate locality; that the period between the two solar passages, at any one place, is divided into halves, known as *ante-meridian* and *post meridian*, each half being subdivided into twelve hours, and that the two halves together constitute a day . . ."

(p. 8.) "Everywhere the days and divisions of the day vary, and the variations are infinite . . ."

"In order to operate the long lines of railway with some degree of safety, each separate manager has been obliged to ignore the different local times, and arbitrarily adopt a special time for the movements of trains on the particular lines under his charge. The railway guide books publish at least seventy five (75) irregularly chosen standards of time employed for the running of trains in the United States and Canada. Every city or town of importance has its own time, occasionally coinciding, but frequently differing from the nearest railway standard. The public have been obliged to accommodate themselves to this irregular system, but it has become exceedingly inconvenient and irksome, and a scheme which will introduce a time-system characterized by uniformity and simplicity cannot fail to be cordially welcomed."

. . . . . .

(p. 9.) "I shall give a brief outline of a proposition for defining and regulating civil time . . ."

(p. 10.) "3. The time-zero to coincide with the prime meridian to be common to all nations for computing longitude" (*Now Greenwich*)

. . . . . .

"5. Twenty four secondary or standard hour meridians to be established, fifteen degrees or one hour distant from each other, the first being fifteen degrees from the prime meridian."

"6. The standard hour meridians to regulate time at all places on the earth's surface."

. . . . . .

"8. The hour of the day at any place on the earth's surface to be regulated by some one of the standard meridians, generally the standard nearest each place in longitude."

"11. Local days to commence twelve hours before and end twelve hours after the (mean) sun's passage over each of the standard meridians.

. . . . . .

"12. Local days will be reduced to twenty four in number within the period of each diurnal revolution of the earth."

. . . . . .

"16. Local time to be known by the particular standard meridian to which it is referred. If it be determined by meridian B it will be designated *Standard B Time.*"

"17. It is proposed to have Standard Time determined and disseminated under Governmental authority. . . ."

. . . . . .

"It would render it practical to secure uniformity, great simplicity, perfect accuracy, and complete harmony. The time of places widely differing in longitude would differ only by hours. . . . By the system proposed, instead of an infinite and confusing number of local days, following the sun during each diurnal revolution of the earth, we should have twenty-four well-defined local days only: each local day would have a fixed relation to the others, and all would be governed by the position of the sun in respect to the Prime Meridian. These twenty four local days would succeed each other at intervals of one hour during each successive diurnal revolution of the globe. . . . and the general confusion and ambiguity which I have set out as the consequences of the present system would cease to exist."

"Some such system as that proposed is imperatively demanded in America. It cannot be doubted that the general adoption of the scheme portrayed would be conducive to the convenience of all mankind."

ACT OF CONGRESS OF AUGUST 3, 1882, 22 STAT. L. c. 380.

"An Act to Authorize the President of the United States to call an international conference to fix on and recommend

for universal adoption a common prime meridian to be used in the reckoning of longitude and in the regulation of time throughout the world."

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be authorized and requested to extend to the governments of all nations in diplomatic relations with our own an invitation to appoint delegates to meet delegates from the United States in the City of Washington, at such time as he may see fit to designate, for the purpose of fixing upon a meridian proper to be employed as a common zero of longitude and standard of time reckoning throughout the globe; and that the President be authorized to appoint delegates, not exceeding three in number to represent the United States in such international conference."

CONGRESSIONAL APPROPRIATION FOR EXPENSES OF INTERNATIONAL CONFERENCE ON TIME REGULATION.

23 Stat. L. c. 332 (July 7, 1884), under State Department.

"For expenses of the international conference for fixing a common zero of longitude and standard of time reckoning, including cost of printing and translations, to be expended under the direction of the Secretary of State, five thousand dollars; and the President is hereby authorized to appoint two delegates to represent the United States at said international conference, in addition to the number authorized by the act approved August third, eighteen hundred eighty-two, and who shall serve without compensation."

MARCH 13, 1884, STAT. L. VOL. 23, C. 12.

"An Act to establish a standard of time in the District of Columbia."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legal standard of time in the District of Columbia shall hereafter be the mean time of the seventy fifth meridian of longitude west from Greenwich.

s. 2. That this act shall not be so construed as to affect existing contracts.

Approved March 13, 1884.

EXTRACT FROM PRESIDENT ARTHUR'S MESSAGE TO CONGRESS.

In his Annual message submitted to the Congress of the United States on December 1, 1884, President Arthur says:

"The International Meridian Conference lately convened in Washington upon the invitation of the Government of the United States was composed of representatives from twenty five nations. The conference concluded its labors on the 1st of November, having with substantial unanimity agreed upon the meridian of Greenwich as the starting point whence longitude is to be computed through 180 degrees eastward and westward, and upon the adoption for all purposes for which it may be found convenient, of a universal day which shall begin at midnight on the initial meridian and whose hours shall be counted from zero up to twenty four.

"The formal report of the transactions of this conference will be hereafter transmitted to the Congress."

. . . . . .

UNITED STATES STATS. L. 40, P. 41 OF PROCLAMATIONS.

The Proclamation of the President under date of December 26, 1917, by which Control of the main transportation systems of the United States was established, contains the following:

"From and after twelve o'clock on said 28th day of December, 1917, all transportation systems included in this order and proclamation shall conclusively be deemed within the possession and control of said Director without further act or notice. But for the purpose of accounting said possession and control shall date from twelve o'clock midnight on December 31, 1917."

PERTAINING TO THE DUTIES OF THE COMMISSIONER OF EDUCATION AND THE TREASURER OF THE COMMONWEALTH OF MASSACHUSETTS.

Gen. Laws, c. 70, School Funds and Other State Aid for Public Schools.

. . . . . .

Section 9. The commissioner of education and the state treasurer shall be commissioners to invest and manage the fund, and shall make an annual report of the condition and income thereof. All investments shall be made with the approval of the governor and council.

Section 10. The accrued income of said fund on December thirty-first annually shall be apportioned by the commissioners thereof, as provided in Part II of this chapter and paid to the towns entitled on the following March tenth.

. . . . . .

Section 14. A town of less than two million five hundred thousand dollars, but not less than one million dollars, valuation, shall be allotted one half the amount by which its assured minimum exceeds the amount that would have ac-

crued therein from a tax of five dollars per thousand dollars valuation. If the total allotment under this section exceeds the amount available after the distribution provided for by the two preceding sections, the state treasurer shall add to said amount, from the proceeds of the income tax, without appropriation, the amount required, but not exceeding two hundred thousand dollars in any one year. If said addition does not permit the payment of said allotments in full, they shall be proportionally reduced and paid.

. . . . . .

Section 17. No town shall receive any payment under Part II of this chapter, unless it has complied, to the satisfaction of the department of education, with all laws relating to the public schools.

PERTAINING TO THE DUTIES OF THE SECRETARY OF STATE OF THE COMMONWEALTH OF MASSACHUSETTS.

Gen. Laws, c. 46, Return and Registry of Births, Marriages and Deaths.

Section 1. Each town clerk shall receive or obtain and record in separate columns the following facts relative to births, marriages and deaths in his town:

In the record of births, date of record, date of birth, place of birth, name of child, his sex and color, names, places of birth and residence of his parents, including the maiden name of the mother and occupation of the father. In the record of birth of an illegitimate child, the name of, and other facts relating to, the father shall not be recorded except on the written request of both father and mother. The term "illegitimate" shall not be used in the record of a birth unless the illegitimacy has been legally determined, or has been admitted by the sworn statement of both the father and mother.

In the record of marriages, date of record, date of marriage, place of marriage, name, residence and official station of the person by whom solemnized, names and places of birth of the parties married, residence of each, age and color of each, the number of the marriage (as first or second) and if previously married, whether widowed or divorced, the occupation of each and the names of their parents, and the maiden names of the mothers. If the woman is a widow or divorced, her maiden name shall also be given.

In the record of deaths, date of record, date of death, name of deceased, sex, color, condition (whether single, widowed, married or divorced), supposed age, residence, occupation, place of death, place of birth, names and places of birth of the parents, maiden name of the mother, disease or cause of death, defined so that it can be classified under the international classification of causes of death, place of burial, name of the cemetery, if any, and if deceased was a married or divorced woman or a widow, her maiden name and the name of her husband. The word "residence", as used in this section, shall be held to include the name of the street and number, if any, of the house.

. . . . . .

Section 16. The state secretary shall prepare and furnish to the clerks and boards of health of towns, and to the superintendent of the state infirmary, record books, books for indexes thereto, forms for returns, on paper of uniform size, and any necessary instructions and explanations, including an explanation that sections one hundred and ten and one hundred and eleven of chapter one hundred and eleven require physicians, registered hospital medical officers, nurses, relatives or other attendants to report immediately to the local board of health every child one or both of whose eyes become inflamed, swollen and red and show an unnatural discharge within two weeks after birth. Town clerks shall distribute the blank forms as the state secre-

tary shall direct. A town may provide such books and forms if they conform to those so prepared.

Section 17. The clerk of each town, and of each city containing less than thirty thousand inhabitants, annually, on or before March first, the clerks of cities containing more than thirty thousand and less than one hundred thousand inhabitants, annually, on or before April first, and the clerks of cities containing one hundred thousand inhabitants or more, annually, on or before May first, shall transmit to the state secretary certified copies of the records of births and marriages recorded therein during the preceding year, with certified copies, upon blanks provided by him, of such records and corrections in such records as have not been previously returned. The clerk of each city and town shall, on or before the tenth day of every month, transmit to the state secretary, upon blanks to be furnished by him, certified copies of the returns of deaths in such town during the preceding month. In case no deaths have occurred, the fact shall be certified by the town clerk within ten days after the close of such month.

. . . . . .

Section 21. The state secretary shall cause the copies received by him for each year to be bound, with indexes thereto. He shall prepare from said copies such statistical tables as will be of practical utility, and make annual report thereof to the general court.

Gen. Laws, c. 5, sec. 4, Printing and Distribution of Laws and Public Documents.

Section 4. The state secretary shall also, at the close of each regular session of the general court, publish in pamphlet form twenty thousand copies of the acts and resolves passed and of any proposed amendments to the constitution passed during such session, and shall at his discretion apportion said copies, excepting one thousand which he may reserve in his office for general distribution, among the

clerks of the several towns, to be delivered by them to such inhabitants thereof as apply therefor.

He shall also, as soon as any act or resolve is passed, send a copy thereof to the following: each state department, officer, board or commission whose duties are affected by any such act or resolve, the clerks of the several towns, for the use of the inhabitants thereof, the justices, clerks and registers of courts, district attorneys, sheriffs, trial justices, justices of the peace authorized to issue warrants and take bail, county law libraries, and all incorporated law libraries and branch libraries maintained by them. He may also send copies to such persons as apply therefor, charging not less than the cost thereof.

PERTAINING TO THE DUTIES OF THE ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS.

Gen. Laws, c. 12.

Section 3. The attorney general shall appear for the commonwealth and for state departments, officers and commissions in all suits and other civil proceedings in which the commonwealth is a party or interested, or in which the official acts and doings of said departments, officers and commissions are called in question, in all the courts of the commonwealth, except upon criminal recognizances and bail bonds, and in such suits and proceedings before any other tribunal when requested by the governor or by the general court or either branch thereof. All such suits and proceedings shall be prosecuted or defended by him or under his direction. Writs, summonses or other processes served upon such officers shall be forthwith transmitted by them to him. All legal services required by such departments, officers, commissions and commissioners of pilots for the harbor of Boston in matters relating to their official duties shall, except as otherwise provided, be rendered by the attorney general or under his direction.

. . . . . .

Section 9. He shall, when required by either branch of the general court, attend during its sessions and give his aid and advice in the arrangement and preparation of legislative documents and business, and shall give his opinion upon questions of law submitted to him by the governor and council or by either branch of the general court. He, or some person designated by him, shall, when requested by a vote of a legislative committee, appear before such committee and advise it upon the legal effect of proposed legislation pending before it.

. . . . . .

Section 10. He shall take cognizance of all violations of law or of orders of courts, tribunals or commissions affecting the general welfare of the people, including combinations, agreements and unlawful practices in restraint of trade or for the suppression of competition, or for the undue enhancement of the price of articles or commodities in common use, and shall institute or cause to be instituted such criminal or civil proceedings before the appropriate state and federal courts, tribunals and commissions as he may deem to be for the public interest, and shall investigate all matters in which he has reason to believe that there have been such violations. To carry out this section, he may appoint necessary assistants, with such compensation as, with the approval of the governor and council, he may fix, and may expend such sums as may be approved by the governor and council. In criminal proceedings hereunder he may require district attorneys to assist him and under his direction to act for him in their respective districts.

OATH OF OFFICE, CONSTITUTION OF MASSACHUSETTS.

Part II, c. 6. "I, A. B., do solemnly swear and affirm, that I will faithfully and impartially discharge and perform

all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution and laws of the commonwealth. So help me, God."

AN ACT TO DEFINE AND ESTABLISH THE UNITS OF ELECTRICAL MEASURE.

(Act of July 12, 1894, c. 131, 28 Stat. L. 101.)

(Sec. 1.) (Units of electrical measure.) That from and after the passage of this Act the legal units of electrical measure in the United States shall be as follows:

First. (Resistance—ohm.) The unit of resistance shall be what is known as the international ohm, which is substantially equal to one thousand million units of resistance of the centimeter-gram-second system of electromagnetic units, and is represented by the resistance offered to an unvarying electric current by a column of mercury at the temperature of melting ice fourteen and four thousand five hundred and twenty-one ten-thousandths grams in mass, of a constant cross-sectional area, and of the length of one hundred and six and three-tenths centimeters.

Second. (Current—ampere.) The unit of current shall be what is known as the international ampere, which is one-tenth of the unit of current of the centimeter-gram-second system of electro-magnetic units, and is the practical equivalent of the unvarying current, which, when passed through a solution of nitrate of silver in water in accordance with standard specifications, deposits silver at the rate of one thousand one hundred and eighteen millionths of a gram per second.

Third. (Motive force—volt.) The unit of electro-motive force shall be what is known as the international volt, which is the electro-motive force that, steadily applied to a conductor whose resistance is one international ohm, will produce a current of an international ampere, and is prac-

tically equivalent to one thousand fourteen hundred and thirty-fourths of the electro-motive force between the poles or electrodes of the voltaic cell known as Clark's cell, at a temperature of fifteen degrees centigrade, and prepared in the manner described in the standard specifications.

Fourth. (Quantity—coulomb.) The unit of quantity shall be what is known as the international coulomb, which is the quantity of electricity transferred by a current of one international ampere in one second.

Fifth. (Capacity—farad.) The unit of capacity shall be what is known as the international farad, which is the capacity of a condenser charged to a potential of one international volt by one international coulomb of electricity.

Sixth. (Work—joule.) The unit of work shall be the joule, which is equal to ten million units of work in the centimeter-gram-second system, and which is practically equivalent to the energy expended in one second by an international ampere in an international ohm.

Seventh. (Power—watt.) The unit of power shall be the watt, which is equal to ten million units of power in the centimeter-gram-second system, and which is practically equivalent to the work done at the rate of one joule per second.

Eighth. (Induction—henry.) The unit of induction shall be the henry, which is the induction in a circuit when the electro-motive force induced in this circuit is one international volt while the inducing current varies at the rate of one ampere per second. (28 Stat. L. 101.)

Supreme Court of the United States

OCTOBER TERM, 1925

No. 967.

THE MASSACHUSETTS STATE GRANGE, THE INHABITANTS OF THE TOWN OF HADLEY, MASSACHUSETTS; THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.,
Appellants,

v.

JAY R. BENTON, AS ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS; FREDERIC W. COOK, AS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS; PAYSON SMITH, AS COMMISSIONER OF EDUCATION, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE APPELLEES.

JAY R. BENTON,
Attorney General of Massachusetts.

LEWIS GOLDBERG,
Solicitor for the Appellees.

SUBJECT INDEX

	PAGE
Statement of the Case	1
Issues	4
Argument	4
I. The Massachusetts Daylight Saving Act is not in Conflict with the Federal Standard Time Act	4
A. The Federal Standard Time Act is limited to —	
(1) The Movement of Common Carriers engaged in Interstate and Foreign Commerce	5
(2) Federal Officials and Departments	5
(3) All Acts done by any Persons under Federal Statutes, Orders, Rules and Regulations	5
B. The Federal Standard Time Act was enacted under the Commerce clause	7
C. The Massachusetts Daylight Saving Act is limited to —	
(1) All Acts done under Massachusetts Laws, Statutes, Orders, Decrees, Rules and Regulations	9
(2) The Intrastate Relations of Persons	9
D. The Federal Standard Time Act was not enacted under the Power to "fix the Standard of Weights and Measures"	9
(1) Even if it were, Massachusetts has Power to act until Congress acts	12
II. There is no Equitable Jurisdiction in the Federal Court to grant the Relief sought	13
A. The Action does not arise under the Constitution and Laws of the United States	13
B. The Diversity of Citizenship cannot confer Jurisdiction because there is No Damage	14
C. There is no Irreparable Damage	14
D. The Basis of the Claim of the Town of Hadley is Political	15
E. Injunctions would be Nugatory	17
F. Bill is an Attempt to obtain an Abstract Opinion upon Constitutionality of the State Act	18
III. The Bill of Complaint is in Reality a Suit against the Commonwealth of Massachusetts and cannot be maintained	21
Conclusion	23

LIST OF CASES CITED

PAGE

Cavanaugh *v.* Looney, 248 U. S. 453, 456 . . . . . 13, 19
Com. *v.* Nickerson, 236 Mass. 281, 293 12
Com. *v.* Warren, 6 Mass. 72 10
Covington & Cin. Bridge Co. *v.* Ky., 154 U. S. 204, 209 . . . 12
Ex parte McNeil, 13 Wall. 236, 240 11
Ex parte State of New York, No. 1, 256 U. S. 490, 497 . . . 21, 22
Ex parte Young, 209 U. S. 123, 166 . . . . . 13, 18, 20, 21, 22
Fitts *v.* McGhee, 172 U. S. 516, 524 . . . . . 21, 22
Fox *v.* Ohio, 5 How. 410, 418. 12
Georgia *v.* Stanton, 6 Wall. 50, 75 17
Giles *v.* Harris, 189 U. S. 475, 487 17
Greene *v.* Mayor of Fitchburg, 219 Mass. 121, 127 20
Harris *v.* Rutledge, 19 Ia. 388, 390 . . . . . 11, 12
Hopkins *v.* Clemson College, 221 U. S. 636, 642 . . . . . 21, 22
Houston *v.* Moore, 5 Wheat. 1, 49 11
In re Ayers, 123 U. S. 443 . . . . . 21, 22
Mass. *v.* Mellon, 262 U. S. 447, 483–489 . . . . . 17, 18
Minnesota Rate Cases, 230 U. S. 352 7
Newburyport Water Co. *v.* Newburyport, 193 U. S. 561, 576 . . 13
Ogden *v.* Saunders, 12 Wheat. 213 12
Opinion of Attorney General (as yet unreported) 7
Pennoyer *v.* McConnaughy, 140 U. S. 1 22
Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U. S. 1, 9 . . . 7
Rawle on the Constitution, Ch. 9 12
Shuman *v.* Gilbert, 229 Mass. 225, 227 20
Silver *v.* Louisville & Nashville R.R. Co., 213 U. S. 175, 191 . . 13
Standard Time Zone Investigation, 51 I. C. C. 273, 283 . . . 6
Story on the Constitution, § 1122 12
Sturgis *v.* Crowninshield, 4 Wheat. 122 12
Terrace *v.* Thompson, 263 U. S. 197, 214 . . . . . 18, 19
Thompson *v.* Dist. of Columbia, 21 App. Cas. (D.C.) 395, 402 . . 10
Truax *v.* Raich, 239 U. S. 33 . . . . . 20, 22
Weaver *v.* Fegeley, 29 Penn. 27 12

LIST OF STATUTES CITED

	PAGE
Act of Cong. Aug. 13, 1912, c. 287, 37 St. 302	6, 7
Act of Cong. March 19, 1918, c. 24, 40 St. 106	4, 5
Act of Cong. Aug. 20, 1919, c. 51, 41 St. 40	4, 5
Mass. St. 1920, c. 280	8
Mass. St. 1921, c. 145	8

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 967.

THE MASSACHUSETTS STATE GRANGE, THE INHABITANTS OF THE TOWN OF HADLEY, MASSACHUSETTS; THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.,
Appellants,

v.

JAY R. BENTON, AS ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS; FREDERIC W. COOK, AS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS; PAYSON SMITH, AS COMMISSIONER OF EDUCATION, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE APPELLEES.

STATEMENT OF THE CASE.

This is an appeal from the District Court of the United States for the District of Massachusetts, constituted of three judges sitting under the provisions of § 266 of the Judicial Code, and amendments thereto, on an application for a preliminary injunction against

the Attorney General, the Commissioner of Education, the Treasurer and Receiver-General, and the Secretary of the Commonwealth of Massachusetts. The court denied the application of the appellants, hereinafter referred to as the plaintiffs, and dismissed the bill.

The bill of complaint (R. 1–31) alleges that c. 280 of the Acts of 1920 of the Commonwealth of Massachusetts, as amended by c. 145 of the Acts of 1921, the so-called Massachusetts Daylight Saving Act, which provides that on the last Sunday in April of each year the standard time of the Commonwealth shall be advanced one hour and shall, on the last Sunday of September in each year, by the retarding of one hour, be made to coincide with United States Standard Eastern Time is unconstitutional and void on the ground that it is repugnant to the Act of Congress March 19, 1918, c. 24, 40 Stat. 106, as amended by the Act of Congress August 20, 1919, c. 51, 41 Stat. 40, which provides for standard time; that these Acts of Congress were enacted under the powers conferred upon it by § 8 of Article 1 of the Constitution "to fix the standard of weights and measures" and "to regulate commerce among the several states and with foreign nations"; that the effect of the operation of the Massachusetts Daylight Saving Act has been, and now is, to cause great and irreparable damage to the individuals who are members of the corporate plaintiffs and to the other plaintiffs; that the appellees, hereinafter referred to as the defendants, threaten to enforce and to assist in enforcing the Massachusetts Act; that the plaintiff, the Inhabitants of the Town of Hadley does not comply with the Massachusetts Act but conducts its affairs upon United States Standard Eastern Time; that the said Town of Hadley is a political subdivision of the Commonwealth and by

virtue of certain Massachusetts statutes is entitled to an allotment from the funds of the Commonwealth as state aid for public schools, provided it has, to the satisfaction of the Commissioner of Education for the Commonwealth, complied with all the laws relating to public schools; that the said Commissioner of Education, one of the defendants, intends to rule that the town of Hadley has failed to comply with the Massachusetts Daylight Saving Act in its application to schools; and that the defendant, the Treasurer and Receiver-General of the Commonwealth, intends to and will decline to pay to the town of Hadley its allotment of state aid for public schools. The bill prays that the Massachusetts Daylight Saving Act be declared unconstitutional and void; that the defendant, the Attorney General of the Commonwealth, be enjoined from enforcing or threatening to enforce that act; that the defendant, the Commissioner of Education be directed to leave out of his consideration the violation of the Massachusetts Daylight Saving Act by the town of Hadley in determining its right to be paid state aid for public schools; that the defendant, the Treasurer and Receiver-General of the Commonwealth, be directed to pay to the town of Hadley the allotment from state aid for public schools; and that the defendant, the Secretary of the Commonwealth, be directed to notify all of the towns of the Commonwealth that the Massachusetts Daylight Saving Act is null and void.

The defendants appeared specially (R. 31–33), denying the jurisdiction of the court, and moved that the bill be dismissed for the reasons that, among other grounds, the proceeding was in reality a suit against the Commonwealth of Massachusetts, that there was no basis

for the equitable jurisdiction of the court, and that there was no matter in controversy arising under the Constitution or laws of the United States.

The opinion of the Court, denying the application for a preliminary injunction and dismissing the bill, is printed in the Record. (R. 35–38.) The plaintiffs filed twenty-three assignments of error (R. 39–46).

ISSUES.

The issues presented by the Record are three-fold:

1. Is the Massachusetts Daylight Saving Act in conflict with the Federal Standard Time Act?

2. Is there any equitable jurisdiction in the Federal court to grant the relief prayed for?

3. Is the action against the defendants in reality a suit against the Commonwealth of Massachusetts?

ARGUMENT.

I.

The Massachusetts Daylight Saving Act is not in Conflict with the Federal Standard Time Act.

The Federal Standard Time Act, Act of Congress March 19, 1918, c. 24, 40 St. 106, as amended by the Act of Congress August 20, 1919, c. 51, 41 Stat. 40, reads in part:

"SEC. 1. That for the purpose of establishing the standard time of the United States, the territory of continental United States shall be divided into five zones in the manner hereinafter provided. The standard time of the first zone shall be based on the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich; . . . . That the limits of each zone

shall be defined by an order of the *Interstate Commerce Commission*, having regard for the *convenience of commerce* and the existing junction points and division points of *common carriers engaged in commerce between the several states and with foreign nations*, and such order may be modified from time to time.

SEC. 2. (Duty to Observe New Time.) — That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all *carriers engaged in commerce between a state and any of the territories of the United States*, or between a state or the Territory of Alaska and any of the insular possessions of the United States or any foreign country. In all *statutes, orders, rules, and regulations* relating to the time of performance of any act by any *officer or department of the United States*, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any act shall or shall not be performed by any person subject to the jurisdiction of the *United States*, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed.

SEC. 4. That the standard time of the first zone shall be known and designated as United States Standard Eastern Time; . . . ."

(All italics are ours.)

The District Court, in construing the foregoing act, held (R. 37, 38) that "it (Congress) has not yet seen fit to go further than to make such standard time applicable only: (1) to the movement of common carriers engaged in interstate and foreign commerce; (2) to its own officials and departments; and (3) to all acts done by any persons under Federal statutes, orders, rules and regulations. So construed, — the Federal Standard Time Act is not exclusive of State action on the same subject-matter; there is no conflict between the two acts;"

An analysis of the Federal Act, we submit, clearly demonstrates that the construction made by the District Court is the sound one. Not only the plain language of the Act but also the fact that the power to define the zones of time was lodged in the Interstate Commerce Commission "having regard for the convenience of commerce" demands that construction. That the Interstate Commerce Commission recognized that interpretation of the Act and the right of the states to establish time operative within the confines of their respective states is shown by its language in Standard Time Zone Investigation 51 I. C. C. 273, 283, where it said,

"While the power of Congress is paramount as to the regulation of interstate commerce and as to the objects enumerated in the daylight-saving act, state and municipal regulations may be controlling as to other matters involving the standards of time to be observed and within the exclusive jurisdiction of local authority."

In a somewhat analogous situation with respect to the regulation of radio, the measurement of air space and the establishment of air wave lengths, Congress plainly showed that it was, there too, acting under its power to regulate commerce, and not under the power to fix the standard of weights and measures, by making the act applicable only to interstate or foreign commerce or where the effect of the radio communication extends beyond the confines of the state. See Act of Congress, August 13, 1912, c. 287, 37 Stat. 302, section 1 of which reads in part:

"That a person, company, or corporation within the jurisdiction of the United States shall not use or operate any apparatus for radio communication as a means of commercial inter-

course among the several states, or with foreign nations, or upon any vessel of the United States engaged in interstate or foreign commerce, or for the transmission of radiograms or signals the effect of which extends beyond the jurisdiction of the state or territory in which the same are made, or where interference would be caused thereby with the receipt of messages or signals from beyond the jurisdiction of the said state or territory, except under and in accordance with a license, revocable for cause, in that behalf granted by the Secretary of Commerce (and Labor) upon application therefor; but nothing in this Act shall be construed to apply to the transmission and exchange of radiograms or signals between points situated in the same state; *Provided*, That the effect thereof shall not extend beyond the jurisdiction of the said state or interfere with the reception of radiograms or signals from beyond said jurisdiction."

With reference to this Act, the Attorney General of the United States, in an opinion given to the Secretary of Commerce dated July 8, 1926, (not yet reported) said,

"There is no doubt whatever that radio communication is a proper subject for Federal regulation under the *commerce* clause of the Constitution. Pensacola Telegraph Company *v.* Western Union Telegraph Company, 96 U. S. 1, 9, 24 Op. 100. And it may be noticed in passing that even purely intrastate transmission of radio waves *may* fall within the scope of Federal power when it disturbs the air in such a manner as to interfere with *interstate* communication, — a situation recognized and provided for in the Act. Cf. Minnesota Rate Cases, 230 U. S. 352."

The Federal Standard Time Act was passed, we submit, *solely* under the power conferred upon Congress by § 8 of Article I of the Constitution to regulate commerce among the several states and with foreign nations. Congress, acting under that power, could not constitu-

tionally extend the scope of the operation of the Act beyond the construction determined by the District Court and that construction, we urge, is not only sound but the only construction which can be made having regard for the constitutionality of the Act.

The Massachusetts Daylight Saving Act, c. 280 of the Acts of 1920 of the Commonwealth of Massachusetts, as amended by c. 145 of the Acts of 1921, reads in part:

"At two o'clock ante-meridian of the last Sunday in April in each year, the standard time in this commonwealth shall be advanced one hour, and at two o'clock ante-meridian of the last Sunday in September of each year the standard time in this commonwealth shall, by the retarding of one hour, be made to coincide with the mean astronomical time of the degree of longitude governing the zone wherein the commonwealth is situated, the standard official time of which is described as United States standard eastern time, so that between the last Sunday of April at two o'clock ante-meridian and the last Sunday in September at two o'clock ante-meridian in each year the standard time in this commonwealth shall be one hour in advance of the United States standard eastern time. And in all laws, statutes, orders, decrees, rules and regulations relating to the time of performance of any act by any officer or department of the commonwealth, or of any county, city, town or district thereof, or relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the commonwealth, and in all the public schools and in all institutions of the commonwealth, or of any county, city, town or district thereof, and in all contracts or choses in action made or to be performed in the commonwealth, it shall be understood and intended that the time shall be United States standard eastern time as changed by this section."

The Massachusetts Act clearly and unmistakably applies *exclusively* to Massachusetts acts and orders and the *intrastate* relations of persons and its operation does not extend beyond the confines of the Commonwealth. It in no wise affects or interferes with interstate commerce nor indeed does it affect or interfere with intrastate commerce. It is not mandatory. It compels no one to use any particular standard of time. It imposes no penalties. With respect to the plaintiffs, it is neither mandatory nor directory. They are left entirely free under the act to govern themselves and their conduct by any standard of time they desire.

It thus appears that, the Federal Act being limited in its operation to common carriers engaged in interstate and foreign commerce, to Federal officials and departments, and to acts done under Federal statutes and regulations, and the Massachusetts Act being limited to Massachusetts statutes and regulations and to exclusively intrastate matters, there is no conflict between the two acts. This, alone, is sufficient ground for dismissing the appeal and the bill of complaint.

The Plaintiffs contend that the Federal Standard Time Act was enacted under the power conferred upon Congress by § 8 of Article 1 of the Constitution "to fix the standard of weights and measures" as well as under the power to regulate commerce. They base their contention on the ground that time is defined a "measure of duration" and that consequently time is included in the "measures" whose standards Congress has power to fix. We urge that this contention is unsound and that it is merely a play upon the word "measure."

The Constitution of the United States should not, as

this Court has frequently said, be construed by merely ascertaining the meaning of words as defined in the dictionary and applying that meaning. The mere fact that the word "time" is defined as a "measure of duration" does not in and of itself bring time within the construction of "measures" as used in § 8 of Article 1 of the Constitution. The construction placed upon words at the time of the adoption of the Constitution, with their historical and traditional background, should control. When construed, they may be made to apply to things unknown and undreamt of by the framers of the Constitution.

The term "weights and measures" had a well-defined and concrete meaning at the time of the adoption of the Constitution and for centuries before that. It applied to the weighing and measuring of *commodities*. It applied to things capable of being the subject of *commerce*. It was declared in Magna Charta that there should be "one weight and measure throughout the kingdom." It was a term well known to the common law, and the giving of false weights and measures was a crime at common law both in England and in the Colonies.

Commonwealth *v.* Warren, 6 Mass. 72.

The standard weights and measures of England were brought to the Colonies and governed therein as part of the common law.

Thompson *v.* District of Columbia, 21 App. Cas. (D. C.) 395, 402.

The object in giving Congress power to fix standard weights and measures was, as stated by the court in the case just cited, to prevent "the several states from fixing

standards that might vary and hence prove a hindrance to *trade* and *interchange of Commodities.*"

In Harris *v.* Rutledge, 19 Ia. 388, 390, the court said,

"Experience in all ages of the world has shown that this (weights and measures) is a proper and even necessary subject of legislative regulation; that in no other way can certainty and uniformity be secured. And similar grievances led to the declaration in Magna Charta that there should be but 'one weight and measure throughout the kingdom.' "

The power of Congress would apply to the fixing of standards of weights and measures of commodities and things capable of being the subject of trade, like electricity or gas, even though they may have been utterly unknown at the time of the adoption of the Constitution, but, we contend, the power does not extend beyond that. It cannot be made to include the measurement of time or of the atmosphere or of the heavenly bodies.

Even if it be assumed that time is included in the commodities or things for which Congress may fix a standard measure, the power of the states to act exists concurrently with the Federal power but is inoperative *only* if Congress acts. As the court said in *Ex parte* McNeil, 13 Wall. 236 at 240,

"It is the *exercise*, (by Congress) and not the existence, of the power that is effectual and exclusive."

And in Houston *v.* Moore, 5 Wheat. 1, 49, the court speaking through Mr. Justice Story said,

"In all other cases not falling within the classes already mentioned, it seems unquestionable that the states retain concurrent authority with Congress, not only upon the letter and

spirit of the eleventh amendment of the Constitution, but upon the soundest principles of general reasoning. There is this reserve, however, that in cases of concurrent authority, where the laws of the State and of the Union are in direct and manifest collision on the same subject, these of the Union being the supreme law of the land are of paramount authority, and the State laws, so far, and *so far only, as such incompatibility exists*, must necessarily yield."

See also to same effect,

Sturgis *v.* Crowninshield, 4 Wheat. 122.
Ogden *v.* Saunders, 12 Wheat. 213.
Fox *v.* Ohio, 5 How. 410, 418.
Covington & Cincinnati Bridge Co. *v.* Ky., 154 U. S. 204, 209.
Com. *v.* Nickerson, 236 Mass. 281, 293, and Federal cases therein cited.

In Harris *v.* Rutledge, 19 Ia. 388, 390, the court said,

"Under the National constitution (art. 1, § 8) congress has power 'to fix the standard of weights and measures.' This power it has never exercised. And until it is exercised, the respective states may, for themselves, regulate weights and measures."

To the same effect are

Story on the Constitution, § 1122.
Rawle on the Constitution, Ch. 9.
Weaver *v.* Fegeley, 29 Penn. 27.

The power of the Commonwealth of Massachusetts to establish standard time for the Commonwealth, even under the theory of the plaintiffs is unquestioned until Congress preempts the field by its own enactments.

But Congress has so far seen fit to limit the scope of the Federal Standard Time Act so as to have no application to intrastate affairs while the Massachusetts act is limited in its operation solely to intrastate matters. We submit, therefore, that, even on the plaintiffs' theory that the Federal statute was enacted under the power to fix the standard of weights and measures, there is no conflict between the two acts and that the appeal and the bill of complaint should be dismissed.

II.

There is no Equitable Jurisdiction in the Federal Court to grant the Relief prayed for.

It is fundamental and elementary that a Federal Court should, on its own motion if necessary, examine the question of its jurisdiction in the matter; that, to give the court jurisdiction, the Federal question cannot be merely colorable but must be real and substantial; and that jurisdiction should not be exercised except "in a case reasonably free from doubt" and "when necessary to prevent great and irreparable injury."

Cavanaugh *v.* Looney, 248 U. S. 453, 456.
Silver *v.* Louisville & Nashville R.R. Co., 213 U. S. 175, 191.
Ex parte Young, 209 U. S. 123, 166.
Newburyport Water Co. *v.* Newburyport, 193 U. S. 561, 576.

We have above demonstrated, we believe, that the Federal question here invoked is not real and substantial and that the case is not reasonably free from doubt. We urge that the Record shows that there is no basis

whatever for the equitable jurisdiction of the court. The plaintiffs base their claim for jurisdiction broadly on the ground that the action arises under the Constitution and laws of the United States, involving more than three thousand dollars, and on the ground of diversity of citizenship. We have already discussed the former. As to the claim of diversity of citizenship, the only plaintiffs who are citizens of other states are The Massachusetts State Grange, a Kentucky citizen (R. 1, 8), the Brotherhood of Locomotive Engineers, an Ohio citizen (R. 2, 14), and the Brotherhood of Locomotive Firemen and Enginemen, an Ohio citizen (R. 2, 15). None of these plaintiffs allege that they own any property which is, or even can be, affected by the operation of the Massachusetts Daylight Saving Act. Nor do they allege any damage to themselves. They merely allege that the individuals who are members of the corporate plaintiffs are, or may be, damaged in their property rights and that they desire to protect the alleged rights of these individuals. But the corporate plaintiffs and their respective members are distinct legal entities and any damage which might conceivably be suffered by the respective members cannot be used as a basis for the purpose of imposing jurisdiction on the court on the ground of diversity of citizenship. Mere diversity of citizenship, without a showing of damage in the sum of three thousand dollars, does not confer jurisdiction on the court.

The plaintiff, Frances C. Snow, a citizen of the Commonwealth of Massachusetts (R. 2, 13), merely alleges that she is the mother of three children. She alleges no property in herself and makes no claim that she is suffering or can suffer any property damage. The

plaintiff, Charles F. Clarke, a citizen of the Commonwealth of Massachusetts (R. 2, 10), alleges that he owns land in Massachusetts but, though he alleges that owners of such land are damaged by the operation of the Massachusetts Daylight Saving Act, he does *not* allege that he himself has suffered, or may suffer, any damage nor does he allege any damage to himself in the sum of three thousand dollars. The plaintiff, Charles W. Mann, a citizen of Massachusetts (R. 2, 11), alleges that the Act causes him damage to the extent of more than $5,000.00. His damage, however, he plainly alleges is due solely to his inability to employ labor on his land after 4 P.M. Standard Eastern Time without paying his employees overtime after that hour (R. 12). But the Massachusetts Daylight Saving Act imposes no duty upon him or upon any of his employees or upon any person within the Commonwealth to maintain any standard of time or to labor according to any schedule. All persons are free to work as they please, at any time they please, and according to whatever schedule or standard of time they desire.

The foregoing six plaintiffs, thus, not only do not show any irreparable damage to themselves or to any of them but it affirmatively appears that not one of them suffers any damage which is directly due to the operation of the Massachusetts Daylight Saving Act. For this reason also the bill should be dismissed as to these plaintiffs and the judgment of the District Court affirmed.

The last plaintiff is the Inhabitants of the Town of Hadley, a municipal corporation of the Commonwealth and one of its political subdivisions. (R. 2, 7.) It alleges (R. 17) that it is entitled by law to an allot-

ment from the funds of the Commonwealth as state aid for public schools, which will exceed $3,500.00 and that the Massachusetts Commissioner of Education intends to rule that the Town of Hadley is not entitled to the allotment by reason of its failure to keep daylight saving time in its public schools and that the Treasurer of Massachusetts for the same reason will decline to pay the allotment to the town.

In fact, the Commissioner of Education has not found, and never intended to find, that the Town of Hadley was not entitled to an allotment as state aid for public schools, and the Treasurer of the Commonwealth never intended to decline to pay such allotment. On the contrary, the full allotment to which the Town of Hadley was entitled was paid to it by the Treasurer when due. Though this fact does not appear on the Record, it is nevertheless a fact which renders the whole proceeding moot so far as the plaintiff, the Inhabitants of the Town of Hadley, is concerned. And this court has repeatedly held that it will not consider moot questions even though they were not moot when the original proceeding was brought.

Even though the matter be not regarded as moot, the bill cannot be maintained with respect to the Town of Hadley. Its damage, if any, is fixed and definite. If it has any rights, it can enforce them by appropriate proceedings in the state court. Under no circumstances can it be regarded as suffering irreparable damage.

Another and more compelling ground for dismissing the bill against all of the defendants with respect to the Town of Hadley is that this is an attempt to have a court of equity determine a political question. The Town of Hadley is a political subdivision of the Com-

monwealth and its relations and rights with respect to the Commonwealth are purely political. The Federal and state courts have repeatedly held that they cannot undertake to enforce political rights.

> Massachusetts *v.* Mellon, 262 U. S. 447, 483.
> Giles *v.* Harris, 189 U. S. 475, 487.
> Georgia *v.* Stanton, 6 Wall. 50, 75.

In Massachusetts *v.* Mellon, *supra*, the court said at p. 483,

> "It is plain that that question, as it is thus presented, is political, and not judicial, in character, and therefore is not a matter which admits of the exercise of the judicial power."

An analysis of the Massachusetts Daylight Saving Act plainly shows that the Act, in so far as it is operative, is self-enforcing and none of the defendants has any duty to perform under it. An injunction is sought against the Attorney General to restrain him from enforcing the Act but there is nothing in the Act which calls for enforcement by him nor is there anything that he can do toward enforcing the act, especially with respect to the plaintiffs. He does nothing under the Act and a decree against him would therefore in effect have to be an order that he refrain from doing nothing. The relief sought against him cannot, therefore, as a practical matter, be given, nor is there any way in which the court could, as a practical matter, enforce any injunction it might issue.

The plaintiffs seek a mandatory injunction against the Commissioner of Education to compel him to leave out of consideration, in determining what money, if any, should be paid to the Town of Hadley from the public funds in the treasury of the Commonwealth in

support of public schools, any violation of the Massachusetts Act by the town. They also seek a mandatory injunction against the Treasurer of the Commonwealth to compel him to pay to the Town of Hadley public money out of the Massachusetts treasury. These are political questions and not enforceable by a Federal court of equity. In addition the effect of such orders of the court would be directed against public money in the treasury of the Commonwealth and would, if it could be enforced, take the property of a state out of its possession. Manifestly this would in effect be a judgment against the Commonwealth of Massachusetts and could not be done.

The plaintiffs seek to have a mandatory injunction against the Secretary of the Commonwealth directing him to notify the various towns of the Commonwealth that the Massachusetts Daylight Saving Act is null and void. No such duty is imposed upon him by law even with respect to such statutes as the Supreme Judicial Court of Massachusetts declares unconstitutional. This prayer would require him to usurp the functions of a court, to determine that an Act of the Legislature is null and void and to so notify the respective towns. Manifestly, the Secretary of the Commonwealth has no such power. He obviously is not a proper party to the proceedings and the bill with respect to him should be dismissed.

The bill of complaint is plainly an attempt to have the court pronounce an abstract opinion upon the constitutionality of a state law and this the court will not do.

Terrace *v.* Thompson, 263 U. S. 197, 214.
Massachusetts *v.* Mellon, 262 U. S. 447, 485.
Ex parte Young, 209 U. S. 123, 156.

In the Mellon case just cited the Court said at pp. 488–489, in holding that the court has no power *per se* to review and annul statutes on the ground that they are unconstitutional, that the party invoking the power of the court must show not only that the statute is invalid but also

"that he has sustained or is immediately in danger of sustaining some *direct* injury as the result of its enforcement, and not merely that he suffers in some indefinite way, in common with people generally. If a case for preventive relief be presented, the court enjoins, in effect, not the execution of the statute, but the *acts* of the official, the statute notwithstanding. . . . Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department — *an authority which plainly we do not possess.*"

In Cavanaugh *v.* Looney, 248 U. S. 453, 456, the court said,

"No such injunction (to enjoin state officers) ought to be granted unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury. The jurisdiction should be exercised only where intervention is essential in order effectually to protect *property* rights against injuries otherwise irremediable."

In the case of Terrace *v.* Thompson, 263 U. S. 197, 214, the court said,

"The unconstitutionality of a state law is not, of itself, ground for equitable relief in the courts of the United States.

. . . Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution whenever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable."

See also Truax *v.* Raich, 239 U. S. 33.

And in *Ex parte* Young, 209 U. S. 123, 156, 157, the court said,

"As no state officer who was made a party bore any close official connection with the act fixing the tolls, the making of such officer a party defendant was a simple effort to test the constitutionality of such an act in that way, and *there is no principle upon which it could be done.* A state superintendent of schools might as well have been made a party. . . .

In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the State, and *thereby attempting to make the State a party.*"

The Massachusetts decisions are to the same effect.

See Shuman *v.* Gilbert, 229 Mass. 225, 227.
Greene *v.* Mayor of Fitchburg, 219 Mass. 121, 127.

Even if it were possible for the Federal Court, as a practical matter, to enjoin the defendants and to issue proper orders, and even if this court declared the Massachusetts Daylight Saving Act unconstitutional, the action of the court would remain wholly nugatory. Such action by the court would not prevent the act from re-

maining in operation nor would it prevent its enforcement since the act is clearly self operating and self enforcing.

For the foregoing reasons, also, we submit that the bill should be dismissed.

III.

The Bill of Complaint is in Reality a Suit against the Commonwealth of Massachusetts and therefore cannot be maintained.

This action is in reality a suit against the Commonwealth of Massachusetts and is prohibited by the Eleventh Amendment to the Constitution of the United States. This inhibition against suits against a state by a citizen of another state applies to the plaintiffs who are citizens of Massachusetts as well as to the foreign plaintiffs.

In re Ayers, 123 U. S., 443.
Fitts *v.* McGhee, 172 U. S. 516, 524.
Ex Parte Young, 209 U. S. 123, 150.
Ex parte State of New York, No. 1, 256 U. S. 490, 497.

It is established that the question whether the suit is against the State is to be determined not by the mere names of the titular parties but by the essential nature and *effect* of the proceeding.

Fitts *v.* McGhee, 172 U. S. 516, 528.
Hopkins *v.* Clemson College, 221 U. S. 636, 642.
Ex parte State of New York, No. 1, 256 U. S. 490, 500, and cases therein cited.

It is equally well established by a long line of cases, many of which have been collected in *Ex parte* Young,

209 U. S. 123, that when officers of a state *who are charged with the enforcement of the law* are about to proceed wrongfully to the direct *injury* of the plaintiff and are bringing or threatening to bring suit against the plaintiff, the action is one against the individuals; otherwise the action is against the state and *will not lie.*

In re Ayers, 123 U. S. 443.
Pennoyer *v.* McConnaughy, 140 U. S. 1.
Fitts *v.* McGhee, 172 U. S. 516.
Ex parte Young, 209 U. S. 123, 155.
Hopkins *v.* Clemson College, 221 U. S. 636, 642.
Truax *v.* Raich, 239 U. S. 33, 37.
Ex parte State of New York, No. 1, 256 U. S. 490.

In Hopkins *v.* Clemson College, *supra*, the court said at p. 642,

"With the exception named in the Constitution, every state has absolute immunity from suit. . . . And, looking through form to substance, the Eleventh Amendment has been held to apply, not only where the state is actually named as a party defendant on the record, but where the proceeding, though nominally against an officer, is really against the state, or is one to which it is an indispensable party. No suit, therefore, can be maintained against a public officer which seeks to compel him . . . to pay out its (the state's) money in his possession on the state's obligations . . . or to do any affirmative act which affects the state's political or property rights."

None of the defendants have any duties to perform with respect to enforcing the Massachusetts Daylight Saving Act against the plaintiffs or any of them. The effect of a judgment against the defendants, if enforceable, would be to take money out of the state's possession and

adversely to affect its political and property rights. The defendants, therefore, we urge, are merely nominal parties to the proceeding, the Commonwealth of Massachusetts is the real party and the suit therefore cannot be maintained.

CONCLUSION.

For the foregoing reasons, we submit, all of the assignments of errors are unsound, the appeal should be dismissed, and the judgment of the court below should be affirmed.

Respectfully submitted,

JAY R. BENTON,
Attorney General of Massachusetts.

LEWIS GOLDBERG,
Solicitor for the Appellees.